

**RULEMAKING ADVISORY COMMITTEE MEETING**

**Aug 23, 2017, 9:30 a.m.**

**Room F, 350 Winter Street NE, Salem, Oregon**

**WORKERS' COMPENSATION DIVISION RULES**

**OAR 436-060, Claims Administration**

**436-075, Retroactive Program**

**Committee members:**

Dan Schmelling	SAIF Corporation
Jaye Fraser	SAIF Corporation
Jennifer Flood	Ombudsman for Injured Workers
Julie Masters	SAIF Corporation
Keith Semple	Johnson Johnson Larson & Schaller PC
Ted Heus	Preston   Bunnell, LLP
Thomas Messuri	Associated Oregon Loggers, Inc.

**Agency staff attending:**

Adam Breitenstein
Barbara Belcher
Barbara Hall
Cara Filsinger
Chris Clark
Denise Williams
Fred Bruyns
Jill Westerberg
Juerg Kunz
Julia Hier
Lou Savage
Troy Painter

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BEFORE THE WORKERS' COMPENSATION BOARD OF

THE STATE OF OREGON

RULEMAKING ADVISORY COMMITTEE

WORKERS' COMPENSATION DIVISION RULES

The proceedings in the above-entitled matter were held in Salem, Oregon, on the 23<sup>rd</sup> day of August 2017, before Fred Bruyns, Administrative Rules Coordinator for the Workers' Compensation Division.

1 TRANSCRIPT OF PROCEEDINGS

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3 00:00: Okay, we're all on the record. Hello. Thank you very much for  
4 coming. My name's Fred Bruyns. I'm the--I coordinate the rulemaking process for  
5 the Workers' Compensation Division and I think I've been in touch with all of you  
6 over the past few weeks. Thank you very much for coming and joining us this  
7 morning. There are agendas, copies of the agenda at the back of the room and also  
8 House Bill 2338, which is pertinent to some of our--or the majority, I think, of our  
9 issues this morning, so I'd encourage you to pick up one of those.

10 We do have a very full agenda, so we're going to ask that we hold new  
11 issues until the end; if we have time, we'll certainly open the table for those for  
12 discussion of those issues. If we do run out of time, which is possible, and this is  
13 true also for the issues that we do have on our agenda, we would welcome any  
14 additional written advice or you may just pick up the phone and call me and I will  
15 document your thoughts and make it part of the record. We want you to give advice  
16 to us in any way that you feel comfortable doing that. Sometimes if it's a brand new  
17 issue that comes up late in the process, we're kind of at a loss to make the change  
18 because we might not have had all of the interested people around the table with us,  
19 but we still encourage you to let us know what you think and, you know, what might  
20 be causing you any problem in terms of existing rule language.

21 So this is an advisory committee, it's not like a public hearing; it's  
22 intended to be very informal and we'll keep it that way. It's our chance to hear from  
23 you, your thoughts on these issues and others, if we get to them, but as we go  
24 along, please provide any information about the costs that may fall upon some of  
25 these possible changes, fiscal impacts, because when we file proposed rules with

1 the Secretary of State we have to estimate those effects and we rely on information  
2 from folks like you, so would appreciate that.

3 If you're on the telephone with us this morning, please keep in mind  
4 we'll pick up background noises, even keyboarding very often, so you may use your  
5 discretion to mute your phone as you think you need to to actually avoid disrupting  
6 the meeting, but I would--please do not put us on hold or we'll get your background  
7 music here and we can't shut it off. You may leave and rejoin the meeting as often  
8 as you'd like.

9 So with that, I've introduced myself. I'd like to begin with the folks on  
10 the telephone with us this morning and have you introduce yourselves to the rest of  
11 the committee. Go ahead.

12 02:43: This is Julia Hier with the Workers' Compensation Division.

13 02:46: Welcome, Julia. Anyone else? Okay. Then I'll turn to my left  
14 and we'll go around the table.

15 03:01: I'm Chris Clark, policy analyst with the Workers' Compensation  
16 Division.

17 03:05: Denise Williams, Workers' Compensation Division.

18 03:08: Troy Painter, Workers' Compensation Division.

19 03:10: Tom Messuri, Association of Oregon Loggers.

20 03:11: Ted Heus, defense attorney with Preston Bunnell.

21 03:14: Cara Filsinger with the Division.

22 03:16: Jaye Fraser, SAIF Corporation.

23 03:18: Barbara Hall with the Compensation Division.

24 03:20: Dan Schmelling, SAIF Corporation.

25 03:22: Julie Masters, SAIF Corporation.

1 03:24: Adam Breitenstein, Workers' Compensation Division.  
2 03:27: Barbara Belcher, Workers' Compensation Division.  
3 03:29: Jennifer Flood, ombudsman for injured workers, DCBS.  
4 03:32: Keith Semple, Oregon Trial Lawyers Association.  
5 03:34: And not to put you on the spot, but if you're in the back and  
6 you'd like to introduce yourselves, go ahead.  
7 03:39: I'm Jerry Kunz with the Work Comp Division.  
8 03:43: Lou Savage with the Workers' Compensation Division.  
9 03:46: Jill Westerberg, Workers' Compensation Division.  
10 03:50: Okay. Again, thank you, all, very much for coming. Before we  
11 actually launch into our agenda, do you have any questions?  
12 04:00: I have a question.  
13 04:01: Okay.  
14 04:01: Yeah, I do. I notice that the WRME issue is--and I'm not  
15 fighting a WRME issue. I just--I noticed that that's number one. It seems like we  
16 should be addressing the things that are--that we need to address toward legislative  
17 entities first and then get back to that.  
18 04:21: Well, you know, it is--it is a very important issue and it'd be hard  
19 to kind of to weigh them. I'm inclined to just go ahead and do it, we do have a  
20 couple people at the table who I know are very interested in this issue and I hope  
21 you will stay for the rest of the issues as well, but my sense is that we'll have time,  
22 we'll have plenty of time--  
23 04:43: Okay.  
24 04:44: --to cover everything, but I do appreciate that. There could be  
25 some prioritization that occurs as we go along, but that one we are going to cover

1 one way or another, but even if we had to set a second meeting, we're going to  
2 cover the WRME issue.

3 05:01: Oh, yeah, I--

4 05:02: Yeah.

5 05:03: --expected that.

6 05:03: Yeah, in case something had to get left out at the end, that  
7 would probably wouldn't be one of them. I'm going to actually turn things over to  
8 Chris to take us through the issues at this point.

9 05:13: Okay. Thanks, everybody, thanks for coming. Yep. In the  
10 interests of time, we will try to get the--through these pretty quickly. I am going to  
11 read through the backgrounds, but I will abbreviate as much as possible, so  
12 hopefully you've had time to read through the issues document. And with that said,  
13 I'll just go ahead and get started.

14 So--yes, so sorry, Jaye, we will start with the WRME issue, but statute  
15 provides that a worker may receive a worker requested medical examination paid for  
16 by the insurer, the insurer relies on an insurer-requested independent medical  
17 examination, IME, report to issue a compensability denial, the worker timely appeals  
18 the denial, and the worker's attending physician or authorized nurse practitioner  
19 does not concur with the IME report.

20 Currently, the Division interprets the phrase "does not occur" to mean  
21 the AP or ANP has provided a response to the IME report that demonstrates a lack  
22 of agreement, the AP or ANP did not comment on the IME report, the Division will  
23 deny requests for WRME, reasoning that there is not evidence that the AP or ANP  
24 does not concur with the report. Two ALJs recently issued orders reversing WRME  
25 denials issued for this reason, arguing our interpretation of does not concur was

1 inconsistent with the terms of the statute. The Division also received feedback and  
2 testimony from several stakeholders expressing disagreement with the Division's  
3 interpretation of the statute.

4 In addition to this disagreement, the Management Labor Advisory  
5 Committee has suggested that expanding access to WRMEs may help reduce the  
6 perception of bias in the IME system. In its final report dated January 18, 2017, the  
7 MLAC IME subcommittee identified a requirement that the worker's attending  
8 physician specifically not concur with the IME report as particularly stringent. Final  
9 report included a recommendation to allow a WRME if the attending physician sends  
10 written objections or provides no response to the IME report within 30 calendar days  
11 from the date of the insurer's denial. Division would like to amend the rule to be  
12 consistent with the MLAC recommendations.

13 We have identified three changes that would need to happen to be  
14 consistent with the MLAC recommendation. That is to amend OAR 436, Division 60,  
15 Rule 147, Section (1) to interpret does not concur to allow a WRME when there's no  
16 response to the IME report from the AP or ANP within 30 calendar days. So I think  
17 we would--we would add that language. We would also have to amend OAR 436,  
18 Division 60, Rule 140 to provide that the insurer must provide the contact information  
19 for the worker to obtain information about WRMEs if paragraph--Rule 140,  
20 Paragraph (8)(a)(B) or (8)(a)(C) of the rule applies, so that would be if there's a  
21 comment disagreeing or no comment, they would have to the worker the number to  
22 get more information about how to schedule a WRME. And, too, currently there's a  
23 requirement that requires documentation that demonstrates the AP or ANP did not  
24 concur with the IME report, and we would need to change that rule to only require  
25 that documentation when it's available.

1                   So, given that said, we'd appreciate any feedback on the change  
2 generally or if there's any other technical areas that people see need to be made,  
3 need to be fixed. And in saying that, I'll turn it over to you all.

4                   08:59: Good morning. Julie Masters with SAIF here. So SAIF's  
5 position is to honor what MLAC recommends generally and in theory. However,  
6 there's a concern or at least some question around the timing thing. So the  
7 recommendation is to allow the WRME if there's no response or of course an actual  
8 disagreement with the IME within 30 calendar days from the date of the denial.  
9 However, a party, a worker has 60 days from the date of the denial to appeal it, and  
10 it's not even known until the denial is appealed whether there'll be the need for this  
11 WRME, so it seems more practical to make that 30 days from the date the worker  
12 appealed the denial, which would actually extend the period in some cases for, say,  
13 a worker's--you know, a worker to obtain some, you know, disagreement or to start  
14 arranging this WRME. It just seems like the timing should be tied to the appeal of  
15 the denial so that we know that the whole thing is necessary.

16                   10:31: So that would be the worker appeals and then requests a  
17 WRME and then the--then the parties themselves would have more time to try to get  
18 a concurrence from the or non-concurrence from the attending physician? Is that  
19 what you're recommending?

20                   10:50: Yeah, I guess so. Yeah, they would have more time to get it or  
21 there--yeah, they would have more time to get it one way or another.

22                   11:00: Would comment for the AP or ANP one--

23                   11:02: Yeah.

24                   11:03: Okay--

25                   11:04: And during the MLAC discussions, issues with the hassle factor



1 for attending physicians also came up, and to be sensitive to the demands on the  
2 attending physician with the 30-day timeframe from the date of the denial without  
3 even knowing whether or not it's been appealed, the insurer's going to be hassling  
4 the AP for concurrence. Regardless of whether the denial is ever appealed, in all  
5 these situations, because we would I don't want to say lose the ability on the WRME,  
6 but because the WRME would be granted with a non-response 30 days post-denial,  
7 we're going to be calling the APART, saying, "We need concurrence, we need a  
8 response, give us something." This helps remove that hassle factor and is sensitive  
9 to the time constraints that the APs have by saying we're only going to follow up--not  
10 only are we going to follow up, but we're going to follow up more closely in those  
11 situations where the worker has appealed the denial. We can focus on that and not  
12 focus on the situations where there's never going to be an appeal.

13 12:10: Right. And the other thing is the Hearings Division has a much  
14 longer window in which to set the date for a hearing, so all this is still going to  
15 happen long before the parties ever get before a judge.

16 12:31: Does anyone else have thoughts on that recommendation?

17 12:35: I mean, I do. So I've been pretty--you know, following this  
18 issue pretty closely for about two and a half years now. And the problem with that is  
19 that it seems like extending the time limit to the date of the denial would basically  
20 resolve sort of the issue of the WRME by the time that the appeal runs around, so if  
21 you issue the denial and 30 days later you don't have a response but you don't have  
22 a disagreement or an agreement with the WRME, then if there is a Request for  
23 Hearing made on the denial, the Department doesn't have a lot of work to do to  
24 decide whether or not a WRME is going to be granted, it'd be almost automatic,  
25 because either there would be something in the record, whether it wouldn't be--and

1 that would pretty much resolve lots of procedural, you know, timelines are correct in  
2 terms of filing the request and the denial based on the IME and that kind of thing,  
3 whereas you still sort of, you know, go back and forth if you extend that time to a  
4 30-day period after the denial is appealed.

5           And you would think--well, I mean, I would think that maybe you want  
6 an attending physician to weigh in one way or the other if you're going to issue a  
7 denial on just an IME to begin with, I mean, the rule requires they send the IME  
8 report to the attending physician. I think that was maybe intended to give the  
9 attending physician a chance to comment on it, although there's nothing in the rule  
10 currently that requires comment on it, but I think that was probably the reason that  
11 they're required to send the report to them in the first place, so making them, you  
12 know, asking them to concur, read the report isn't really too much of a burden on  
13 their time anyway, some probably read it, some probably just stick it in a file, some  
14 probably never see it at all, but-- So the 30-day limit, if the 30 days is appropriate,  
15 running from the denial seems to be sort of the middle ground. I mean, it could run  
16 from the date of the IME, it could run from the date of the denial, or it could run from  
17 the date of the Request for Hearing. Thirty days seems to be sort of a balance  
18 between those three options.

19           14:39: And I think one of the things, though, that we're forgetting is  
20 sometimes a claim is denied for reasons other than medical issue and can be  
21 because of subjectivity or, I don't know, I've never denied a claim personally, so I'd  
22 have to look to Dan, but if we have this hard-and-fast, I mean, it may not even be  
23 relevant, and I think what SAIF is concerned about is not the WRME per se, but the  
24 increased expense to the system of having to follow up every time with an attending,  
25 whether it's relevant or not, and then secondarily, I don't know, you go to the--to the

1 Medical Advisory Committee meetings and there is--and certainly the recent  
2 meetings that we had talking about the availability of physicians to service injured  
3 workers and provide medical treatment for them, so it seems to--seems to us that if  
4 we have the ability to only bother and follow up with attending physicians when  
5 there's really a need for it, that it would do something, spends--end some of the  
6 hassle for attending physicians.

7 16:08: And we're not saying we're not sending a concurrence out. Our  
8 practice is an IME results in a concurrence letter to the AP because we want to know  
9 their opinion. But in those situations where the AP is not quick to respond, this is  
10 going to require us calling, sending follow-ups to the AP, saying, "What's your  
11 response, what's your response, what's your response? We have five days to get a  
12 response; what's your response?" So we can prioritize our time to--we don't even  
13 have attorney representation for this worker yet, but yet we're hassling the AP for  
14 that, so we want to be sensitive to the medical providers and be hassling them when  
15 there's a reason to hassle them, there's a hearing request, we know that, you know,  
16 the worker has the right to a WRME if there's does not concur and no response, so  
17 let's put our effort into those versus every single claim that we deny, we deny it  
18 immediately.

19 17:14: I agree, and a point that I'm hearing from what Jaye said that,  
20 unless I'm missing something, the statute here says that if the denial is based on the  
21 IME and the AP doesn't concur, the worker may request examination, but the rule  
22 doesn't seem to reflect this option, so the rule says in every single denial where  
23 there was an IME, you have to put one of these three statements, not every single  
24 denial where that was based on the opinion of the IME then put these three  
25 statements, you know, AP did concur, AP didn't concur, AP didn't comment; this is

1 the current--the current rule. So it seems like that also should be a little more  
2 tailored to the circumstances and say, "If the denial was based on the IME, then you  
3 put one of these statements in." Instead what the rule currently says specify the  
4 factual and legal reasons, including worker's right to request a WRME, and  
5 statement indicating if the denial was based on it and one of these statements as  
6 appropriate, so it should be or contingent; if it was based on an IME, then put one of  
7 these statements and, you know, changing those statements up as you indicated in  
8 the agenda here. Said either doesn't concur or not an early (unintelligible) opinion,  
9 I'm not sure, but--

10 19:01: And it's--

11 19:02: --the point is--

12 19:03: Yeah.

13 19:03: --you're throwing something in there that may not be relevant  
14 and then the message is confusing, because it could be the IME said it's  
15 compensable medically, but there's still some other defense like course and scope,  
16 horseplay, you know, whatever-have-you, credibility, I don't know.

17 19:31: Well, my response would be the ones that aren't based on the  
18 IME, there's you just don't issue the denial based on an IME, and then the IME's  
19 excluded (unintelligible) on that, so if you put it--if you had an IME and it says, well,  
20 you know, maybe (unintelligible) think it should be denied on some other reason, you  
21 just issue a denial and say this denial's not based on the IME and then litigate  
22 (unintelligible)--

23 19:53: And then you don't have to put those statements, but the rule  
24 says--

25 19:56: No--

1 19:56: --you still have to put all these statements in.

2 19:58: Well, yeah, the rule, I don't know, I mean, I don't have it in front  
3 of me, and that would not be necessary unless the IME doc denial to (unintelligible)--

4 20:06: Exactly, that's what I'm saying.

5 20:07: Yeah, so I don't--I don't know if there's a problem with that, but I  
6 was sort of responding to Jaye's comment that there are other--there are a multitude  
7 other reasons to deny a claim, on causation, et cetera, but each insurer gets to  
8 decide whether or not they want to rely on their IME when they issue the denial, and  
9 that's what triggers this sort of, you know, process, WRME process. Those other  
10 denials are, you know, something else, did they rely on an IME or not when you  
11 decide (unintelligible)--

12 20:39: But that--

13 20:40: --for one reason or another--

14 20:41: But that could change over time, we could issue a course and  
15 scope denial with an IME and the claim, issue the course and scope denial, not  
16 relying on the IME, resolve the course and scope, but still fall back on the IME, and  
17 then we could issue an amended denial saying now we're issuing an amended  
18 denial, course and scope's no longer at issue, but-- So to get away from that, you  
19 know, amending that, let's just make it clear that, you know, if we relied on a WRME  
20 or on an IME, we put the WRME language in, and then at that point in time when it  
21 becomes relevant, there's a hearing request, because without the hearing request  
22 the worker's not eligible for a WRME. And that puts everyone then on the, okay, you  
23 have 30 days now; if you don't already have concurrence, to go out and get it. If the  
24 insurer simply sits on their hands, well, then you're going to get a WRME.

25 21:42: Okay. So just for the notes there, so SAIF is recommending

1 that 1--Rule 140, Section (8)(a) just be revised to only require these extra steps to  
2 be included when a WRME's relevant, when it's relevant to the WRME process, so if  
3 there's no IME--

4 22:01: Right, it was based on--

5 22:03: Yeah, okay.

6 22:04: --the IME, correct--

7 22:05: Yeah, and that's certainly something we can look at.

8 22:06: Yeah, it's one of the positions.

9 22:13: Okay. Going back to the when the 30-day clock initiates, was  
10 there any more thoughts on whether that should be 30 days from the date of denial  
11 or 30 days from the date of a Request for Hearing? Does anybody else have  
12 comments on that?

13 22:38: This is Keith for the Oregon Trial Lawyers Association. You  
14 know, I can see, certainly see arguments in favor of the 30-day rule that MLAC  
15 debated for quite awhile--

16 22:52: Yeah.

17 22:53: --and agreed to. I do have to say that I do see some, you  
18 know, challenges if potentially, you know, if we're doing this before a denial--before a  
19 denial has been appealed and I do see that, you know, potentially you could be  
20 going to doctors on some unappealed denials just to get this non-concurrence or  
21 concurrence and going to a lot more of them than, you know, than might be  
22 otherwise appropriate. You know, normally I like to see injured workers appeal their  
23 denials if they think that they, you know, would like to have a WRME at some point,  
24 you know, they have a, you know, reason to do that, but I can see that potentially it  
25 could, you know, result in more contact with the attending physicians and, you know,

1 potentially more hassles for them, so frankly when I--it's a very rare case where I see  
2 an attending physician disagree with the IME and that to carry more weight than the  
3 IME itself in the decision-making process, so I guess that's my thought on that, but I  
4 do have a little more concerns in terms of how we make sure that it's clear that the  
5 insurer is relying or not relying on the IME.

6           One way to do this would be to kind of reverse the wording of the rules  
7 so that the worker gets an IME unless--or a WRME, unless these conditions are met.  
8 The doctor concurred with it or didn't--concurred with it within a certain period of  
9 time, the insurer certifies that they're not relying on the IME; that would be a reason  
10 the worker wouldn't get the--be otherwise eligible for the WRME. You know, et  
11 cetera, and have those rules phrased, since one of the stated goals is to increase  
12 access to WRMEs is to have the rules default to the benefit of the worker as  
13 opposed to forcing there to be language that could force hurdles that the worker  
14 can't overcome, such as making sure that the denial was or wasn't based on the  
15 IME. You know, some insurers are a lot better about that than others and some  
16 insurers actually follow the rule. A lot of folks don't follow the rules, and there's really  
17 no recourse for the worker when they don't follow the rules. That's why the default  
18 should be the opposite and, you know, that would solve most of the problems that  
19 we're concerned about. Ted, did you--did you submit some language or some  
20 proposed--

21           25:21: Yeah, I sent a letter and changes proposed (unintelligible).

22           25:25: I mean, essentially the language that I saw that you submitted  
23 reversed, just switched it, reversed the default. The default right now is the worker  
24 doesn't get a WRME unless, and the default could be the worker gets a WRME  
25 unless and, you know, so that would be, you know, my point of view. I mean, I

1 guess it, you know, kind of I'm not as concerned about the timeline and whether it  
2 runs from the date of the denial, but I am concerned about all these other hurdles  
3 that, you know, the language gets interpreted in a certain way and WRM--you know  
4 WRME's just not available based on just kind of semantics, so--

5 25:59: And I agree with Keith on there's some insurers out there that  
6 aren't following the rules, and from our perspective we feel the rules are clear that if  
7 we issue a denial based on an IME, we have three options to put in that denial  
8 language. One of my suggestions in the past is, if the denial isn't clear, if it doesn't  
9 provide that, but the worker's attorney believes that, you know, well, one, there is an  
10 IME pre-denial and it was probably likely the cause of the denial, is the Department  
11 could at the time a WRME is requested go to the insurer and say, "You have seven  
12 days to say whether or not you relied on an IME. If you say yes, then, okay, you're  
13 eligible for the WRME. If you say no, then you can use the defense of "Hey, you  
14 didn't rely on this IME." So that could be done, too.

15 26:54: In the alternative, that, I think, would be appropriate--

16 26:56: And that would be a good education piece because every time  
17 the insurer forgets to put the language in that's already in the rule that we already  
18 have our responsibility to add, it's a reminder to them of, hey, you're not following the  
19 rules. Also allows the Department to track and see who those bad apples are, so if  
20 they need to do some remedial education, they can go to that service company or  
21 insurer and say, hey, look, we've had 10 WRME requests and not one of them did  
22 you put the language in the denial letter; what's going on here? So I think it would  
23 force some educational.

24 27:36: Do we have access to this language that you submitted?

25 27:40: Yeah, we have the letter of advice and you're all welcome--it's



1 all public information, so--

2 27:45: Oh, is it on your website?

3 27:47: No, it's not on our website, we don't post all advice that we  
4 receive, but we post all testimony, formal testimony.

5 27:53: Okay.

6 27:54: But if you'd like, you know, I'm actually--right after this meeting  
7 I'm probably out of the office, but by tomorrow sometime I can actually send a copy  
8 of that letter, Ted's letter to all of you.

9 28:06: Yeah, that would be helpful because, you know, hearing  
10 another lawyer hearing about "Oh, well, you suggested some language and, you  
11 know, Keith says it says something," and I just kind of need to see it, so, before I can  
12 comment on it--

13 28:19: Certainly.

14 28:20: It sounds in theory reasonable to me.

15 28:24: Yeah, so basically, I mean, so I view it as three options, sort of  
16 the three options that he said, they agree, disagree, or no comment, and so my  
17 interpretation of statute is does not concur means that they haven't concurred, and  
18 so that's the only option in which you don't get a WRME is if they sign a concurrence  
19 letter agreeing to change the rule--

20 28:43: Right, and that's what MLAC conclude and--

21 28:46: Right, and so it changes the rule to reflect the--you know,  
22 exactly clear that in one of the circumstances we don't get a WRME then is if the  
23 attending physician doesn't--agrees with you, sorry. You get a WRME if the  
24 attending physician agrees with the IME rather than does not concur, you know,  
25 does not respond, something like that--

1 29:05: Right, you don't get a WRME if the attending--  
2 29:07: Agrees.  
3 29:08: Agrees.  
4 29:08: Agrees.  
5 29:09: And that means--  
6 29:09: And they do if they--  
7 29:10: If the other two options occur.  
8 29:11: If the other two options occur, and what we're talking about is  
9 what sort of triggers it, what other elements of the statute trigger that entitlement?  
10 So there's a statute that says, if the worker has made a timely Request for Hearing--  
11 29:28: Right.  
12 29:28: --on a denial that is based on one or more reports of  
13 examinations conducted and the AP or nurse practitioner does not concur, the  
14 worker may request an exam, so there's more elements than that and--  
15 29:45: So the first two are essentially procedural. What--you know,  
16 there's an IME, they relied on it to deny it, and a timely Request for Hearing. Those  
17 are already in the rule and I didn't--you know, I didn't make any changes to those--  
18 29:56: Okay.  
19 29:56: --the other criteria; I'm just focused solely on sort of the  
20 interpretation does not concur and whether or not (unintelligible)--  
21 30:02: Oh, okay. Yeah. Got it--  
22 30:04: So switching it around to say that in order--you know, the  
23 (unintelligible) has to agree in order to extinguish that right to a WRME makes it  
24 clear that, unless they agree to it, you're--you know, you've met the requirements for  
25 eligibility otherwise, as long as you (unintelligible) and that would basically--

1 30:21: Right.

2 30:21: --remove any need to have a time limit.

3 30:24: Well, the time limit is different, and I can kind of go into and  
4 explain why because I've had a case with SAIF that that just sort of happened on.  
5 And this, the 30 days, the way it's written right here doesn't resolve it, and I didn't  
6 have the greatest language to resolve it, but basically this language doesn't account  
7 for changes of opinion, and so we had a case with SAIF where they had no  
8 comment, WCD denied it because of no comments, took it to a judge. Right before  
9 the hearing, SAIF got the concurrence from the AP. Because there was also an  
10 underlying compensability issue, it was a new or omitted condition issue, I requested  
11 deposition, at the deposition we got (unintelligible) the IMEs, they're like, "Oh, well,  
12 that's not what I understood the IME to be. I understood the IME to say this, but I  
13 don't agree with that," you know, so had that in deposition, submitted to the judge,  
14 and they basically say, "Okay, all right, well, you know, actually I think SAIF just  
15 conceded this, yeah, that's not a concurrence anymore," so we got the WRME that.  
16 That was like four months after request (unintelligible)--

17 31:30: But couldn't that go in either way?

18 31:33: It could, we're just saying the rule doesn't address that--

19 31:35: (unintelligible) denied, then you go to the attending and the  
20 attending says--

21 31:39: Right.

22 31:39: --"No, I no longer concur with that," so it kind of goes both ways

23 31:43: It does. I'm--my--

24 31:44: So--

25 31:44: --my point was that the rule language 30 days doesn't really

1 address that, so you get your concurrence in 30 days, your (unintelligible) comes,  
2 and then request a hearing or whatever it gets down to and deposition or, you know,  
3 one side or the other goes to, it's like, oh, yeah, I didn't really understand it like that  
4 or, you know, (unintelligible) basically, and so that doesn't really address like how  
5 the WCD's supposed to interpret that, I mean (unintelligible) I guess.

6 32:11: I figure at the time when they're looking at the WRME request,  
7 either there is an affirmative "I concur with the IME" or an affirmative "I don't concur"  
8 or a non-response, and you can't worry about what's going to change in the future;  
9 it's at the time it's presented to WCD for the WRME request, it's based on the facts  
10 that are in file at that point in time. And if a WRME's granted and then later the AP  
11 says, "Well, no, I do concur with the IME," does that WRME just then disappear? It's  
12 already happened, so--

13 32:46: Well, the WRME hasn't already happened. I've had that  
14 happen, too, where basically the concurrence is submitted after the WCD has  
15 already approved the WRME request and then they rescinded it and basically said,  
16 "No, we--now that we have a concurrence, we're not going to get you the WRME,"  
17 and I've done it the opposite until I learned my lesson. So I got a concurrence after  
18 the WCD has already denied my WRME request and got the concurrence, submitted  
19 it, they reversed it, and granted a WRME, so--and the record is not closed with what  
20 went before the judge, it's not limited to the what the WCD looks like or looks at, so  
21 you can go get these additional evidence before the judge and there's no  
22 timeliness--

23 33:24: So we would be limited to the 30-day non-response, but you  
24 wouldn't be limited to that 30-day non-response because you're either going to get  
25 the WRME because it's a non-response or you could overturn our concurrence to

1 get a non-concurrence to get a--

2 33:36: Right.

3 33:37: --WRME, so again I'm to the point of why have the timeframes?  
4 Just look at it and the facts that are presented at that point in time--

5 33:45: But there has to be a timeframe because of the situation I just  
6 described. I mean, literally I've got a concurrence the day before hearing, the  
7 hearing had to be postponed in order to depose the doctor and, like I said, that non-  
8 concurrence that resulted in the deposition was four months after I requested the  
9 WRME. That's way too long, that's an additional, you know, period of, I mean,  
10 hearing time, full-on hearing, the WRME process (unintelligible) you know, and I  
11 think in my letter I talk about like all of them have been delayed up to eight months  
12 or more from the time that you requested to the time that they actually had the  
13 WRME, that's just, that's unreasonable. I mean, eight months is just too long just to  
14 get an evidentiary report into the record, and so there has to be a time limit  
15 somewhere, like the record has to be frozen at the WCD or, you know, something  
16 like that, there has to be a time limit; or otherwise, you're just going to--or I could  
17 have gone on appeal, well, I can't go on appeal because the record's limited to--

18 34:37: So if the time limit--

19 34:38: --hearing, but--

20 34:38: --was applied against you, though, you would have appealed  
21 that and tried to find that that was procedurally invalid or contrary to statute or some  
22 such thing.

23 34:50: I may try to do that, yes, but--

24 34:51: And then delayed it--

25 34:52: But--

1 34:53: --that much more.

2 34:54: You know, whether that's successful or not, I don't know. I  
3 mean, WCD I think has authority to sort of make procedural limitations and rules. It  
4 certainly does in other cases, you know, that are not necessarily (unintelligible) the  
5 statute in order just to sort of define the rules, you know, the playing field, so to  
6 speak--

7 35:12: So what is it that you're advocating for here?

8 35:15: Well, my rule, the best way I could, you know, come up with  
9 was 30 days from the denial, I used the language from MLAC, but then said and  
10 continues to concur thereafter, meaning that if they change their opinion because,  
11 you know, honestly a person should get a WRME if you depose a doctor and they  
12 say, "Oh, well, I've looked at it and now I actually read it and I misunderstood it the  
13 first time I looked at it, you know, and I no longer concur with these conclusions,"  
14 then, you know, that's sort of the circumstances in which you would, you know,  
15 supposed to get a WRME, supposed to be a specialist, compared to a specialist, not  
16 a family doctor, compared to a specialist, so that's all I had, and I understand that is  
17 sort of one-sided, but it seems kind of like a binary issue for somebody at this point  
18 to have to, you know, give the default situation, whether that's a default to the worker  
19 or default to the insurance company (unintelligible), I don't know, is sort of a policy  
20 decision.

21 36:10: Well, I think the policy decision's already made at MLAC and  
22 there's a lack of concurrence, be it passive or active, there's entitlement, and so I  
23 think there's agreement about that here, and the disagreement seems to be around  
24 this time limit and the procedural stuff as to whether it's permissible to continue to  
25 get changes of opinion up to the eve of hearing or whether there's a cutoff date and

1 whether that cutoff date should be tied to somebody appealing the denial, which is  
2 the only thing that's going to trigger the thing anyway, and thereby eliminate a lot of  
3 letters going to attending physicians who already don't particularly love practicing in  
4 this system, or whether there's going to be this 30 days from the date of the denial,  
5 which to me seems sort of arbitrary because the appeal right on a denial is 60 days,  
6 so at least if you're going to tie it to that, make it the same as the time to appeal it.  
7 Where does 30 days come from? The insurer has 60 days to investigate the claim  
8 and the worker has 60 days to appeal the denial, and yet suddenly we have 30 days  
9 in there where go get this thing from the attending physician, so--

10 37:34: Yeah, I--

11 37:35: Um--

12 37:35: Oh, please go--

13 37:36: Just a couple statements here. Jennifer, ombudsman for  
14 injured workers. Appreciate the conversation, some of it I didn't follow myself. It  
15 was all of this was discussed at length in MLAC regarding where that timeframe runs  
16 from.

17 My concern is, one, we have the expectation that an insurer is going to  
18 attempt to get concurrence prior to issuing the denial; that comes from all kinds of  
19 conversation as well. But the decision as to where that 30-day runs from, I think that  
20 we really, one, it's been talked about at length at MLAC, but, two, the impact on the  
21 timeframes for the worker moving forward and getting decisions made, I think, is  
22 vitally important. I apologize if it's offensive that I say the gaming, but if there's  
23 gaming involved that delays that process, that--the real impact is on that worker.  
24 You know, the rest of us are out here doing what we do every day in the Workers'  
25 Comp realm, but for that worker moving forward with their situation, I think it's

1 important to look at a timeframe that's going to, one, ensure compliance of the  
2 industry on getting that concurrence and, two, not inundating all providers, but again  
3 not requiring that unless the insurer's relying on that IME to issue that denial, so  
4 that's just my concern, the stretching out of the situation and holding our industry  
5 accountable for applying the laws and rules that are in place.

6 39:31: This is Keith Semple again. So I was just--wanted to go back  
7 slightly to the conversation about the doctor continuing to concur after a deposition,  
8 for example, I think that's really important that that re-triggers the discussion. I  
9 mean, I understand again that it could be viewed or argued as being one-sided; I  
10 don't think that that's the case. You know, we're trying to remedy a problem here of  
11 perception of bias when the insurer gets an IME and relies on it and the injured  
12 worker has nothing but a treating family doctor or the like to try to counter that with.

13 To the extent that the doctor just signs a concurrence and didn't really  
14 understand what they were signing and didn't truly concur, that should allow the  
15 worker to go and address that perception of bias, you know, under the same policy  
16 that we're--that this whole discussion was born out of, so I do think that it should be  
17 the doctor needs to continue to concur after the initial concurrence, and if that  
18 changes, then I think the WRME should be triggered, and if that delays things, you  
19 know, sometimes delay is necessary. You know, sometimes you don't just go to  
20 hearing with whatever you got whenever you got it if there's other strategic moves  
21 that you can make to advocate for your client, and one of those is deposing a doctor  
22 to find out what they really meant.

23 So, you know, I do feel very strongly that that should be an ongoing  
24 evaluation of the doctor's true concurrence or non-concurrence, and if the hearing  
25 has to be postponed for a WRME, typically that's going to be to the injured worker's



1 benefit as opposed to just having to go with whatever they've got at the time.

2 41:15: If there's somebody in the room that's more involved directly in  
3 processing requests, please do correct me, but I don't think the rules do prohibit a  
4 worker from making more than one request for a WRME, so if their one--first request  
5 is denied and then the facts change, I think they could submit a second request, and  
6 so if they--the concurrence or the position of the AP has changed, would the ability  
7 to just request, submit a new request for a WRME saying, okay, the reasons for that  
8 denial are now no longer in effect or we're making a new request, would that--would  
9 that also satisfy the same?

10 41:56: You know, I don't think that it would. I mean--

11 41:58: Okay.

12 41:58: --part of the reason why we're here today is we've been relying  
13 on procedural interpretations this whole time and those interpretations have been,  
14 you know, construed in a way that limits the worker's ability to get a WRME, so, you  
15 know, to the extent that you can insert a simple phrase "Continues to concur" as part  
16 of the factors, you know, I think that makes more sense than just relying on whoever  
17 happens to be interpreting it in terms of whether it can be done or not. That can lead  
18 to further litigation, it can lead to seemingly inconsistent outcomes, and that's really  
19 the thrust of why we would like the default switch and frankly why we're here talking  
20 about this issue and why we have been for months now.

21 42:50: I just have a question. How often are you going to go back to  
22 the doctor until he doesn't concur? If you understand what I mean. You're saying as  
23 long as the doctor continues to concur; how often are you going to go back to the  
24 doctor until he does not concur and go with you?

25 43:08: Well, what happens is a doctor, and doctors frequently get

1 these lengthy 20-page reports and just get a letter saying, "Do you agree or  
2 disagree?" and there are some doctors who sign those and then you call them on  
3 the phone for a phone conference to talk to them about it or you have a deposition  
4 where you cross-examine the doctor's concurrence letter and you find out that the  
5 doctor really didn't quite understand what they were saying. Certainly we're not  
6 going to go back again, I mean, it costs us money to go to these doctors, we only get  
7 one deposition, so that's not a multiple-time type of thing, and it costs us money  
8 every time we go to the doctor to clarify, "Did you really agree with the IME or not?"  
9 Frankly, sometimes we do that, at least in my practice, sometimes I do that,  
10 sometimes I just rely on the idea that the doctor kind of knew what he was looking at  
11 and what he was signing, or she, but it's not something where we go back again and  
12 again and again and again and again and--

13 44:00: Some (unintelligible)--

14 44:01: --hassle the doctors. Jeez, we don't want to hassle the doctors  
15 any more, I mean, the lack of doctors is a problem for us and our clients--

16 44:07: I'm just a simple man, just--

17 44:08: Yeah, no, I get it, I get it, I get it, I don't want to hassle the  
18 doctors, I mean, they're--and, you know, what's the likelihood that a doctor's going to  
19 change their opinion on the second or third phone call as opposed to tell you what  
20 they think in, you know, in the first? What we--what we do need to test sometimes is  
21 whether the doctor really agreed with each major significant point in the IME as  
22 opposed to "Well, I wasn't there, you know, I'm not a specialist and, sure, I'll agree  
23 with it." You know, sometimes we need to have a deeper conversation about that,  
24 so, no, it's not a multiple-time--

25 44:40: Okay.

1 44:42: It sounded like that--  
2 44:43: Oh, gosh, no--  
3 44:44: --as long as he--  
4 44:45: --no, no--  
5 44:45: --continues to concur.  
6 44:45: Oh, man, it would cost us a ton of money to have the hassle of  
7 conversations with the doctor.  
8 44:53: Okay. Well, in the interests of time and wrapping these up, I  
9 mean, maybe we can kind of go over what's been discussed. So we talked about  
10 possibly changing the recommendation for the 30 days from date of denial to  
11 30 days from date of hearing. I think the Division will need to look at that a little  
12 more closely and possibly get some more input. We've talked about reframing the  
13 issue from the worker's eligible for an exam if the criteria are met to the worker is  
14 eligible for an exam unless the criteria are not met. Does anybody have strong  
15 opposition to that change? Okay. So I think we will-- Yeah, so there's consensus  
16 there, I think we'll make our attempt to move forward with that.  
17 45:53: Keeping in mind that--  
18 45:54: Yeah.  
19 45:54: --I'll be sending out a copy of Ted's letter to all of you--  
20 45:56: Yeah, I was going to say--  
21 45:56: Yeah--  
22 45:57: --I don't think that SAIF is right now in a position--  
23 46:00: Okay.  
24 46:00: --to tell you how. I mean, we want to see Ted's--  
25 46:05: Sure. I get--yeah.

1 46:09: SAIF's solution is consistent with the MLAC decision--

2 46:13: Right.

3 46:13: --as far as, unless the criteria are met, you get it. Unless it's  
4 been amended or elaborated on in Ted's letter, we don't know about that--

5 46:23: Okay. So Ted's suggestion, and sorry to speak for you, Ted,  
6 but I will read exactly what it says, would be to change the words to say the worker  
7 is eligible for an exam unless the worker has not made a timely request for a  
8 Workers' Compensation Board hearing on a denial of accountability--compensability  
9 as required by ORS 656.319(1)(a), the denial was not based on one or more  
10 independent medical examination reports or, instead of "and," the attending  
11 physician or authorized nurse practitioner agrees in writing with a report or reports  
12 no later than 30 day--calendar days after the denial and continues to agree with the  
13 report or reports thereafter. I understand that you probably want to look at that, but--

14 47:11: And I think that--

15 47:12: Yeah.

16 47:12: Because I think Julie has said it best, and we were prepared to  
17 come in here and basically agree with the MLAC proposal. Our 30-day question to  
18 Jennifer's point was really more of a way of this is an opportunity to have continued  
19 discussion--

20 47:31: Yeah.

21 47:31: --and to make the proposal look better. What I think what Ted  
22 is suggesting may have merit and we're willing to, you know, kind of take a deeper  
23 think at it, but I think at this point that all we're prepared to do is to say, you know,  
24 we're prepared to go ahead with what MLAC has proposed--

25 47:55: Okay.

1                   47:56: Yeah, and again we're open for, you know, written advice or  
2 just, as we say, call me and I'll document it or for at least the next week, so...

3                   48:07: Okay. So we will look forward to additional advice on that.  
4 Yeah.

5                   48:13: I just had one more comment that I want to make sure is clear.  
6 So MLAC's, you know, if I remember correctly also, MLAC is talking about making a  
7 WRME available when there's no response, as in a certain amount of time. I'm  
8 strongly opposed to the language of not having a response, that's going to be  
9 litigated to the moon, but whether the response saying, "I have no comment," well,  
10 he responded--

11                   48:34: Okay.

12                   48:35: --so it needs to be one of those three categories, and I think  
13 changed it to where agreement is that--

14                   48:41: Okay.

15                   48:41: --the single category distinguishes the right to WRMEs  
16 (unintelligible), so I just want to make that clear.

17                   48:50: And I do know that in MLAC there was a lot of discussion  
18 around exactly what that language should be and what would satisfy that, so we  
19 will--we will look at that very carefully, and I--as you know, the rule formerly said  
20 disagreement, I think, too, instead of does not concur to be more clear on how we  
21 were interpreting it, so I do see how agreement would be more clear. Okay.

22                   And so the last change we really discussed here was tailoring  
23 Rule 140(8)(a) a little more closely so that they only--a denial letter only needed to  
24 include the three statements if it was a denial of compensability that was based on  
25 an IME report or one or more IMEs. And was there any large concerns about that

1 change? Okay. So that seems reasonable. Okay. So it sounds like we will  
2 continue to look at that.

3 I know on the--on the two issues, if anybody would like to--the two  
4 unresolved issues of when that 30 days should start and how the, I guess, defaulting  
5 of the language should be framed, we'd appreciate more written advice on that, but I  
6 think, unless there are more pressing issues, we should maybe move on with the  
7 agenda? So we have one hour left or a little over an hour. Is that amenable to  
8 everybody, everybody getting on-- Okay. Excellent.

9 Okay. So the majority of these issues, the following issues, have to do  
10 with fatal benefits or death benefits. Starting with this first issue is actually a several-  
11 part issue, so as an overview, 656.204 provides benefits when a worker dies from a  
12 compensable injury. These fatal benefits include payment of the cost of final  
13 disposition of the body and funeral expenses and monthly benefits to the worker's  
14 spouse, children, and surviving dependents. 656.208 provides for these benefits to  
15 be paid when a worker dies during a period of permanent total disability and leaves  
16 a surviving beneficiary.

17 Several rules currently address specific aspects of fatal claims; you  
18 can see them listed there. But the Division believes a new rule providing specific  
19 guidelines for the processing and payment of fatal claims could clarify some  
20 longstanding issues related to fatal claims. In addition to consolidating some of the  
21 rules above, topics the new rule may address are discussed in the following sub-  
22 issues. I think we'll go through these one by one, but when we're done if there's  
23 other issues that people would like to see in a rule or issues that we should stay  
24 away from, please do let us know, but--yeah, so that said, I'll just go ahead and start  
25 the first--well, actually before that, I will just get a general sense. Does everybody--

1 does that make sense? There's currently there's rules for--to payment of temporary  
2 disability, there's rules for payment of permanent disability, but there's no rule for  
3 processing and payment of fatal claims, so this will just be a new rule in Division 60,  
4 probably somewhere, yeah, located somewhere around those other rules. Yeah--

5 52:50: Yes, it would be--

6 52:52: Yeah.

7 52:52: --welcome.

8 52:53: Okay. Good. Okay. Then so for the substance, the first issue  
9 we looked at was that ORS 656.228 provides that an insurer may pay benefits  
10 directly to a beneficiary if *sui juris* or directly to the parent or guardian of the  
11 beneficiary if otherwise. Otherwise, the law does not provide clear guidance on  
12 when or how an insurer should stop payments to the parent or guardian and then  
13 begin payments to a child or dependent that becomes independent. There's a little  
14 discussion here about the definition of *sui juris*. Basically, it means somebody that is  
15 having full rights and not under any legal disability or power of another or  
16 guardianship. So under Oregon law, that most often occurs when the person  
17 becomes 18 or becomes married. There's also a provision in Chapter 656 which  
18 would probably only really apply to these circumstances, that a minor working at an  
19 age legally permitted under Oregon law is also considered *sui juris*.

20 With the new bill, House Bill 2338, and fatal benefits being payable  
21 until a beneficiary turns 19, we think that this issue will come up more often. So we'd  
22 actually really like some input from the industry on how this is currently managed, if  
23 there's a process in place for when a beneficiary turns 18, if they're notified of their  
24 right to receive benefits directly, or if that's something that's normally followed up on  
25 or not.

1                   We also are considering requiring insurers to notify the eligible  
2 beneficiary to entitlement for benefits before their 18<sup>th</sup> birthday just so it's clear  
3 what's to be expected and that the guardian and the beneficiary would have an idea  
4 of when payments might stop to one party and commence with another, so...

5                   55:11: So how does--when does SAIF start switching--

6                   55:14: So as the only insurer.

7                   55:15: Yeah--

8                   55:15: Right. Yes--

9                   55:16: Sorry.

10                  55:18: Yes, we do all of these things now--

11                  55:20: Okay.

12                  55:20: --inform beneficiary prior to their 18<sup>th</sup> birthday of their right to  
13 maintain their benefit beyond their 18<sup>th</sup> birthday graduation, or whatever, that  
14 endpoint would be at this time. In those situations where an 18-year-old is no longer  
15 living at home, we provide the option of one check goes to usually the widow and the  
16 beneficiary's check would be mailed directly to the beneficiary. We don't specifically  
17 send something out saying, "You have this right," but in the conversations that we're  
18 having with whether it's the custodial person or the beneficiary child, a request is  
19 made, we have paperwork that we send out so that we can direct the checks into  
20 two different folks. I don't think this would be a problem to simply advise them that  
21 they have that right. I think it's really a family matter and, depending upon the  
22 relationships and the family, sometimes the custodial parent holds the purse strings,  
23 but if the child asks for that and they're 18, then the money's redirected.

24                  56:39: So is the practice, what I don't know is legally when a child  
25 turns 18, legally should those payments be going to that child then, regardless of



1 where they're at? And what I'm hearing from you is that SAIF doesn't really go down  
2 that road; you kind of deal with it on an individual basis, saying, "God, we don't have  
3 very many of these"--

4 57:07: Well, thankfully the statute says may, so, no, it's not a  
5 requirement.

6 57:12: I mean, is there other legal requirements outside of Workers'  
7 Comp regarding--

8 57:18: We don't know anything about anything outside of Workers'  
9 Comp.

10 57:23: And our checks to differentiate this is the widow's portion of the  
11 benefit check, it's--

12 57:31: You do one check for all--

13 57:33: We do one check for all, but it line-items it out and says, okay,  
14 if there is no widow and two beneficiary children, who--this is whose getting these  
15 portions. Ah. We're no longer dealing with non or with traditional families--

16 57:48: Right.

17 57:48: --and so we have a lot of situations where we have a widow  
18 receiving benefits and three, four, five beneficiaries living with a variety of custodians  
19 where the checks might be going here for awhile and go back to the custodial parent  
20 for awhile, so we're used to this. It's just communication and again at the request of  
21 the family where you want that check to go. At age prior to 18, we're looking for  
22 some type of natal order, like the custodial, the parent now is the custodian, and we  
23 might ask for that documentation because grandma was the custodian--

24 58:30: Right.

25 58:30: --and she has legal rights to be the custodian, but at 18 my

1 unders--my belief would be that those custodial rights would go away unless maybe  
2 they're an invalid, so--

3 58:43: And that's kind of where we were at with the 18 to the 19. Not  
4 to overshare, but there was a true situation where an insurance company, it was not  
5 SAIF, continued paying a child's benefit payable to the order of the mother's name,  
6 but the child hadn't been there for a very long time, didn't even know the benefits  
7 were there and, you know, a year and a half later when she realizes, "What do you  
8 mean I've been entitled to benefits when I'm 20 years old and attending higher  
9 education and stuff?" and actually in that situation I've actually believed that they  
10 would like offset the amount because it was a different amount and all that stuff, too,  
11 but the insurer's advice was they paid the wrong person, and so, I mean, that was a  
12 kind of a double-payment thing, they can go after their mom for something else, but  
13 the insurer went back and paid the full benefit to the child again, so that's one of the  
14 reasons why this came up is that, yeah, how do they--how do we do that?

15 And now that after January 1 the benefits are going to extend to the  
16 age of 19, we're really crossing over that, but personally I think it's a great  
17 opportunity to be able to educate the children at the age of 18 "Hey, these are  
18 benefits and also, hey, this is an explanation as to what your higher education  
19 benefit is." But I don't know legally, if a child is 19 years old, is it legal for those  
20 benefits to be paid to the order of their parent, other parent? They should reinstruct  
21 the industry that at the time of 18 when the child turns 18, those benefits need to be  
22 paid to the child, unless there's, you know, other circumstance, and I don't know the  
23 legal answer to that.

24 1:00:56: Neither (unintelligible)

25 1:00:57: Well, I didn't get (unintelligible), maybe it's right here in the

1 law.

2 1:01:09: Yeah, there is a mechanism for benefits paid directly to a  
3 child before the parent or guardian has claimed those, but not really--it doesn't say  
4 much about the other way around when the payment's made to a parent or guardian  
5 when the child has made a claim for those benefits, so...

6 1:01:36: Because it does say before they're 19, should be paid to each  
7 such child until the child becomes 19, but then, practically speaking, those checks  
8 are actually going to the parent.

9 1:01:48: Because of the other statute--

10 1:01:50: Through the operation--

11 1:01:50: --it talks about regarding--

12 1:01:51: --of .228, yeah.

13 1:01:53: Yeah. So given at least what we know here about that, it  
14 make sense what Dan was saying to, you know, notify them "You're entitled to this if  
15 you want," then to have (unintelligible) sometimes is a family thing.

16 1:02:19: Yeah.

17 1:02:20: Okay.

18 1:02:20: Yeah.

19 1:02:22: So does that sound all right, Jennifer, does that seem  
20 reasonable that, unless there's some legal reason why a check couldn't continue to  
21 be sent to a beneficiary, the insurer should start paying the beneficiary upon  
22 request? So if they're *sui juris* and they say, "I want the benefits," then the insurer  
23 should be required to start sending the check, yeah--

24 1:02:45: Well, what you're saying to me is different than what Julie had  
25 said because Julie had said--

1 1:02:50: Okay.

2 1:02:51: --it's a family thing and they can decide.

3 1:02:52: Right, well, I'm saying if--yeah--

4 1:02:53: If they're 19 years old, is that where SAIF was going, if  
5 they're 19 and mom says, "I hold the purse strings, I know they're off at college and  
6 they're doing their own thing, but still the check to me."

7 1:03:04: I don't think that can come from mom at that point.

8 1:03:05: Well, that's my--yeah, but it does at this point--at this point  
9 how we've been dealing with it, right--

10 1:03:11: Yeah. I think, yeah, so I think what I was saying was that, so  
11 if there's a notification sent to the child that says, "You have a right or you may claim  
12 these benefits and request that a separate check be sent to you upon your 18<sup>th</sup>  
13 birthday or when you become *sui juris*," but we don't force the insurer to start  
14 automatically sending it off and to check--

15 1:03:33: That's where the legal--

16 1:03:34: Yeah.

17 1:03:34: --question and I don't--

18 1:03:35: Yeah.

19 1:03:36: --know that it's right to say (unintelligible)--

20 1:03:38: I--we did do a little bit of background research, there's no  
21 clear guidance on, you know, if there's--if it's has to automatically cut off even if the  
22 family doesn't want that to happen, so we could--we could do a little bit more  
23 background and we could check in with DOJ and get some stuff there, but what I'm  
24 hearing from SAIF is that there are some cases where the child may say, "No, keep  
25 sending it to my mom," right? Or there's some cases where they say, "Please send

1 it to, I mean"--

2 1:04:09: Yeah, but they keep sending it to their mom and then a year  
3 and a half later they say, "Hey, you never paid me," I'm not--

4 1:04:15: Oh, okay.

5 1:04:15: --thinking from a child's perspective at this point, I'm talk--I'm  
6 looking at it from an insurer's perspective--

7 1:04:20: Yeah.

8 1:04:21: --as to what direction is the Department giving to an insurer  
9 so there's predictability to a family? And I get the fact that I hold the purse strings--

10 1:04:31: Right.

11 1:04:32: --but--

12 1:04:34: You've done that.

13 1:04:35: You forget (unintelligible) yeah.

14 1:04:38: If we would be--if the insurer would be held responsible for  
15 paying the beneficiary had they been paying the custodial parent during that time,  
16 then, yes, we would like some clear direction that at age 18 that a notice be provided  
17 that lets that beneficiary child know "These are my rights going forward," and it kind  
18 of is jumping ahead, but I--is the in--as an insurer, I would ask that WCD consider  
19 putting together some type of specific notice that--

20 1:05:16: I agree.

21 1:05:17: --let's the worker beneficiary child know "I'm turning 18, here's  
22 one right, I have the right to receive that check. My benefit will end at 19. Oh, by  
23 the way, here's how you can continue to receive your benefit between 19 and 26,"  
24 and that could also double as a request for benefit form where them signing it and  
25 providing documentation of enrollment in higher education, vocational services,

1 what-have-you, that we would receive that beneficiary's notified of their rights and  
2 clearly lets them know "You have a responsibility to communicate with us, provide  
3 proof of enrollment, and then your monthly check's going to go out."

4 1:06:05: And address to send it to because they're always changing  
5 where they are.

6 1:06:09: In most cases now--

7 1:06:10: Email.

8 1:06:10: --with the kids is direct deposit.

9 1:06:13: Yeah.

10 1:06:14: Oh, yeah.

11 1:06:14: Yeah.

12 1:06:15: And whether or not mom has access to that, that's a family--

13 1:06:19: That's a family matter.

14 1:06:23: Gotcha.

15 1:06:24: And that type of control, as a parent, that type of control is,  
16 just remember that.

17 1:06:32: Okay. So that's sounds like it's generally acceptable if we  
18 have some--we work on getting some sort of letter together that explains rights and  
19 the process for election to get your own benefits and how to get your higher  
20 education benefits. Okay.

21 1:06:49: Yeah, and that permits that to be done all, you know,  
22 electronic form, that'd be all the better.

23 1:06:53: Okay.

24 1:06:54: Demographically--

25 1:06:55: We do our best, you know, we are--have technological

1 limitations ourself, but we--I think--yeah, I know there's a lot of--

2 1:07:02: (unintelligible) like then we--

3 1:07:04: Yeah.

4 07:04: --create it and send it out that way--

5 1:07:05: Yeah.

6 1:07:06: Okay. Okay. Well, thank you, thank you, those are really  
7 very helpful input. Okay. So the next issue is that 656.208 provides fatal benefits  
8 for surviving beneficiary when a worker dies during a period of permanent total  
9 disability, some insurers reopen the claim and send an updated Notice of  
10 Acceptance at closure when this occurs. However, the divis--these claims are  
11 already closed and a new opening is not necessary to begin payments to the  
12 beneficiaries. The Division would just like to clarify this by rule because it's  
13 apparently it's--it has been a point of confusion for sometime.

14 1:08:03: It's a point of confusion--

15 1:08:04: Yeah.

16 1:08:04: --like I said, luckily we don't have a whole lot of these claims,  
17 but--

18 1:08:07: Yeah.

19 1:08:09: --there's--it's confusing to adjusters.

20 1:08:14: And the infrequency of it makes it even more--

21 1:08:17: Right--

22 1:08:17: Exactly.

23 1:08:18: --imperative that there be instructions because then every  
24 time you've got new people or people who don't remember or--

25 1:08:24: Yeah, yeah.

1 1:08:31: And so we were kind of considering whether this would be  
2 best placed in the--this new rule or in the Notice of Closure rule. I--my-- Does  
3 anybody have any input on where you look for things or is it better to have kind of  
4 redundancy and...

5 1:08:54: My-- Oh, go ahead, go ahead, you say it, because I'm sure  
6 it's (unintelligible)--

7 1:08:57: I move for redundancy--

8 1:08:59: Okay.

9 1:08:59: --because to me it's a Division 30 issue--

10 1:09:01: Okay.

11 1:09:01: --not a 60 issue.

12 1:09:03: Right, but if Division 60 were to reference it and send it to 30  
13 regarding the closure, that way the adjuster who doesn't deal with these all the time  
14 can go to one spot, kind of one-stop shopping that directs them where to go.

15 1:09:18: Okay. Well, we will do our best to make that high-visibility.  
16 Okay. The next issue we have here is that Division 75, Rule 40, Section (2)  
17 provides that permanent total disability benefits must be paid to the date of death at  
18 the time that fatal benefits begin or, where fatal benefits are not due, permanent total  
19 disability benefits must be paid through the date of death.

20 So, one, we want to move this to Division 60 because we feel like it's  
21 for current benefits, not just retro benefits, and people might see it more it fits with  
22 the other claims processing rules. In addition, we've been reviewing the  
23 appropriateness of having the two different standards and considering possibly  
24 simplifying it to provide that permanent total disability benefits are always payable  
25 through the date of death and that benefits to the surviving beneficiaries begin to



1 accrue the day after the date of death. We-- I mean, it's a pretty ambiguous area,  
2 although we understand that the two standards is the--is how it's been forever, and  
3 there are good reasons why it has those two standards, but if anybody has any  
4 comments or suggestions on if it'd be desirable to collapse those into both being  
5 payable through--PT always being payable through the date of death, we'd--

6 1:11:07: And time loss.

7 1:11:08: And time loss, yeah, sorry. It is--yeah, that's--this rule is--

8 1:11:11: Well, the worker just doesn't die--

9 1:11:12: Yeah.

10 1:11:12: --immediately and is receiving time loss and then--

11 1:11:15: Yeah.

12 1:11:16: --dies, just for simplicity purpose for the folks that don't deal  
13 with it every day, our rules say you pay up to the date of death if there's a survivor  
14 that's going to get benefits, but if there is not a survivor that gets benefits, you pay  
15 through the date of death, and so it's like do we pay to or through, and?

16 1:11:37: I--okay, (unintelligible) anything. We think that, one, it would  
17 be nice to carve out PTD and fatal benefits from Division 61-50 into its own, call it  
18 155, that just addresses PTD and fatal, it would provide clarity. Pulling some  
19 75 rules into the 60 with this again will provide clarity. We're aware of the paying to  
20 and through of these various benefits, so whereas we're already doing it, if the rules  
21 were changed, we would conform and follow those rules.

22 1:12:17: But as far as problems for, I guess, the recipient of the  
23 benefits, you know, you don't have a specific position or...

24 1:12:29: You mean as to to and through?

25 1:12:31: Yeah.

1 1:12:31: One day, just as long as it's clear.

2 1:12:33: Okay.

3 1:12:34: Yeah--

4 1:12:34: Yeah.

5 1:12:35: And the thing with the PTD benefits, when the PTD dies and

6 it goes to spousal benefits and we say, if there's a surviving spouse, their--currently

7 their benefits start the day of the death, which we all go, well, it's just one day and

8 how much difference there is there? But between a PTD benefit and a fatal benefit,

9 there can be quite a bit of difference, and so it--

10 1:12:57: Either way.

11 1:12:58: Either--yeah, either way, so...

12 1:13:01: As long as we had a rule that we could point to--

13 1:13:04: Is clear.

14 1:13:04: --that would provide clarity.

15 1:13:05: Yeah--

16 1:13:05: Okay.

17 1:13:08: And my own opinion is if a person is still alive, they're entitled

18 to those benefits, so if we went with one standard, I would say you pay through the

19 date of death to the--to the worker and then survivor benefits the next day begin to

20 do that.

21 1:13:33: Okay. Any other thoughts about that specific requirement?

22 Yeah, this is a-- Definitely I looked at it for a long time, and it's kind of mind-

23 boggling, so... So I appreciate everybody's thoughts and comments.

24 1:13:52: Yeah, I agree with Jennifer because actually the PTD statute

25 says when permanent total disability results from the injury, the worker gets blah

1     blah blah, so the day of death they were still permanently totally disabled, so it  
2     should go through that date.

3             1:14:13: Okay. Great, well, it sounds like there's a consensus that that  
4     would be a good change and it would be consistent, we will continue to make sure  
5     that that is actually consistent with what the statute says, and if it is, we'll, I think,  
6     be--we will make that change in the proposed rules.

7             Okay. We-- The next issue regards dependent benefits. And just to  
8     clarify, so the statute defines dependent as a parent, grandparent, stepparent,  
9     grandson, granddaughter, brother, sister, half-sister, half-brother, niece, or nephew  
10    who at the time of accident are dependent in whole or part for their support upon the  
11    earnings of the worker and those dependents are entitled to a monthly payment that  
12    is equal to 50 percent of the average monthly support the dependent actually  
13    received from the worker during the 12 months preceding the occurrence of the  
14    accidental injury.

15            The issue of what documentation is sufficient to establish both  
16    dependency and calculate the benefits has been litigated several times; one major  
17    case is listed here. The Division would like to provide some guidance on insurers on  
18    what documentation may be acceptable and would appreciate input on what types of  
19    financial or other evidence are commonly received to support the claim of dependent  
20    benefits. We would definitely like to leave some flexibility here because I think the  
21    range of different situations a dependent might find themselves in can vary  
22    significantly and the kinds of supports they receive, so I don't think we're trying to set  
23    a real firm guidelines, but if at least there's some things that everybody agrees on  
24    "This is what is accepted and this is kind of the process through which we can verify  
25    dependency," I think we would--we would appreciate any input on, and SAIF being

1 the insurer at the table, if you guys have any advice on what you see or how you  
2 treat these claims, we would--we would appreciate it.

3 1:16:47: Go ahead, Dan.

4 1:16:48: It's a case-by-case situation--

5 1:16:49: Yeah.

6 1:16:51: It's really lovely if we have a check written out to the parent or  
7 the dependent or we see a bank transfer on a regular basis from, you know, that  
8 they can show that it's from this bank account, that bank account, that bank account  
9 happens to be the dependent. Ah. It's never that easy, so it's really case-by-case.  
10 We work with that dependent to basically brainstorm, you know, do you have this, do  
11 you have that, how can you prove that you are giving, you know, your mom \$100 a  
12 month? Well, we don't know, so it's case-by-case.

13 1:17:34: Well, the person who was giving the money is now gone, so  
14 they can't give testimony as--

15 1:17:39: Right.

16 1:17:39: --there's always affidavits from other people or maybe we  
17 don't even get that.

18 1:17:44: We maybe get one of these a year. Yeah.

19 1:18:00: Like Dan says, it's all over the place and I was like, oh, this  
20 rarely happens, but as of late there's been two or three that have processed and it's  
21 like, oh, we don't know, and so from the ombudsman's perspective, giving some  
22 clarity to the family members as to, you know, what may be expected, but from--and  
23 then in my head I go to, well, and how will a regulator go in and if they're auditing to  
24 ensure that if an adjuster says, "Well, I just really believe you, so I'm going to pay the  
25 benefits," what happens when audit goes in? So looking for some kind of--some

1 kind of guideline to where there's some clarity for the family and some transparency  
2 for an insurer to feel confident they're not doing the wrong thing.

3 1:19:00: Yeah. Yeah, I--

4 1:19:03: It would be hard to put that in a rule and say this is enough  
5 and this isn't, because it's so case-by-case. Yeah. Unless there's official  
6 investigation with that, obviously if there's canceled checks, but usually they're living  
7 in the same household or--and their worker was paying all the bills--

8 1:19:25: Well, and in some cases, because with definition of  
9 dependent it doesn't include a spouse or a child unless that spouse or child doesn't  
10 live in the United States, then it includes them, so sometimes they're not in this area,  
11 and tracing cash is difficult, you know.

12 1:19:47: And money orders.

13 1:19:48: Hm?

14 1:19:48: Or money orders.

15 1:19:49: Or money orders. Yeah. And I don't know, I mean, I  
16 probably should have some idea, but I kind of go, "Well, audit, what do you need?  
17 when you go (unintelligible) it to ensure that benefits are appropriately being  
18 provided, because one adjuster may say, "That affidavit is enough for this case," and  
19 the adjuster two cubes down might say, "No, affidavit is not enough," and so that's  
20 where I kind of--not to turn over every single pebble because there aren't that many  
21 cases here, but when there are the cases, and there's some live ones right now,  
22 what's a reasonable documentation or some examples? Like I said, you can't  
23 really--I don't know how a rule is written to help us from the insurer's standpoint in  
24 administering the accurate benefits and from the regulatory standpoint of holding  
25 insurers accountable for paying accurate benefits.

1 1:20:53: Well, I think that the bigger audit question for audit is what's  
2 going to make you comfortable that it's reasonably paid? But I'm guessing the  
3 bigger issue is going to be when something doesn't get paid.

4 1:21:05: Correct.

5 1:21:06: And so--

6 1:21:07: Well, those are the ones that go to litigation, yeah.

7 1:21:10: So I guess I'm frankly less concerned about the auditors  
8 coming in than on the other side of the coin with employee we need to look at to  
9 make good determination, I'm guessing that we're probably err on the side of we  
10 believe you and we'll pay. Believe it enough in that situation.

11 1:21:46: I mean, I don't know (unintelligible) audit, I mean--

12 1:21:47: Yeah.

13 1:21:47: --(unintelligible) time, what would audit like to see--

14 1:21:49: Well, yeah, maybe to invert this a little bit, is there anybody in  
15 the room that has any ideas for things that we could clarify in this process?

16 1:21:59: Well, I was going to ask Troy--

17 1:22:00: Yeah.

18 1:22:00: --when you--or when you guys have gone out and audited,  
19 what, have you ever seen one where there was a denial or they approved the  
20 payment and you thought with the documentation it should not have been approved?

21 1:22:09: I don't--I don't remember hearing about any of them. There  
22 aren't very many of these--

23 1:22:13: Yeah.

24 1:22:13: --like Dan said, they're--

25 1:22:14: Yeah.

1 1:22:14: --they're pretty rare, but for all I figure either way, it could be  
2 that they're not paying something that maybe they should be and we can't make  
3 them because there's no standard, or if you go the other way and we're paying  
4 something that shouldn't be, it's just there's no standard at all, we have nothing to fall  
5 back on and say you should or shouldn't be paying.

6 1:22:33: Yeah.

7 1:22:34: We have so recently there where we've gotten calls from  
8 insurance companies saying, "What's--what kind of documentation do we need?"  
9 and--

10 1:22:41: I don't know.

11 1:22:42: --we say there's no rule for that.

12 1:22:43: Yeah.

13 1:22:44: But--and that's where I feel that from a regulatory standpoint  
14 we're falling a little short in ensuring benefits to be provided and direction to the  
15 insurers for providing accurate benefits. I know that the answer isn't easy or--

16 1:22:59: Yeah.

17 1:23:00: --or I don't even know if the answer is there, but one thing  
18 with dependent benefits is that there's no retro involved, which sometimes an insurer  
19 will go, "Well, okay, then I don't have to worry about what's going to happen on the  
20 retro end of it," but there is that concern falling on whether or not they did, you know,  
21 deviated at audit. My concern is, if an adjuster is paying and then it's like "Oh, well,  
22 maybe we shouldn't," that uncertainty for that family member isn't right in my mind,  
23 that they should have a clear understanding as to when they are entitled to  
24 something or not, as well as--

25 1:23:40: And (unintelligible).

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1:23:41: Pardon?

1:23:42: How do you--how do you prove a cash payment? I don't know (unintelligible). And how do you disprove it?

1:23:51: Perhaps a rule could just provide some examples of acceptable documentation, including saying including but--

1:23:58: Including but not limited to?

1:23:59: --including but not limited to, maybe including affidavits in that because--

1:24:02: Yeah.

1:24:02: --if it's a cash transaction, I don't know how you're going to--

1:24:05: Yeah.

1:24:08: That is the most commonly litigated issue for these type of incidences, you know, when an insurer finds that "Yeah, you demonstrated that these cash payments establish dependency, but there's no record for us to base a benefit calculation on," and that seems to be a common problem and one that I'm not entirely sure if we can--we can resolve--

1:24:38: Yeah.

1:24:38: --although--yeah--

1:24:41: Well, and one example, let's say a young adult is the sole provider for the whole family, and so the rent and all of that stuff, the young adult that is fatally injured, you know, everything is under their name, but who all is she supporting and living with, and trying to provide that documentation. I don't know. It makes it hard. I mean, if an affidavit would do it, you know, I could--from the family's perspective, that might be really smooth; from an insurer's perspective when they get, you know, 15 affidavits, I'm not sure.



1 1:25:30: So are people living in the home if the decedent is--they have  
2 like in-fills--  
3 1:25:38: Not living.  
4 1:25:42: Does he have ID that lists that as their residence?  
5 1:25:45: Probably not.  
6 1:25:48: Yeah, I know, other issues.  
7 1:25:55: Yeah. So--in at least your perspective, would an affidavit  
8 that, you know, attests to specific amounts or approximate amounts be sufficient to  
9 say if somebody says, "I--you know, I know the son gave \$250 to the parent every  
10 month, you know, for groceries or whatever," would that--would that be enough to  
11 verify that there's 125 there? I mean, I'm just saying, or is that still--is that still too  
12 uncertain to--yeah--  
13 1:26:33: It still might depend upon the--  
14 1:26:35: Okay.  
15 1:26:35: --facts of the claim because--  
16 1:26:36: Okay.  
17 1:26:37: --I mean, one thing we would look at is what was the worker's  
18 earnings at the time of their fatality? And if the affidavit came in saying, "I received  
19 \$1000 from my son," and we had the payroll records for the last year and it didn't  
20 demonstrate that that was--  
21 1:26:53: Sure, yeah.  
22 1:26:54: --possible--  
23 1:26:56: Yeah.  
24 1:26:59: Whereas an affidavit in Jennifer's situation that she was just  
25 describing where you have family members living with someone who's providing rent

1 and utilities, that might be a different situation.

2 1:27:17: Maybe the insurer should have the investigator go talk to the  
3 neighbors and (unintelligible).

4 1:27:30: So, yeah, you could draft a rule that suggests like bank  
5 statements, affidavits, records, utility bills, and all that stuff, you know, suggest it but  
6 not limited to--

7 1:27:42: Yeah.

8 1:27:42: Yeah.

9 1:27:43: --you know, what does that really add?

10 1:27:44: Well, it's not going to help, it's not going to help audit--

11 1:27:47: Yeah.

12 1:27:47: --but it might give some direction to insurers and to  
13 beneficiaries, at least to know the kinds of things that might be good--

14 1:27:55: Well, and I actually think--or you may not agree with that, but  
15 that does provide some guidelines for an auditor because if they were to go in and  
16 look at the file--

17 1:28:06: Yeah.

18 1:28:07: --and they had four or five different items in there that would  
19 reasonably support that--

20 1:28:15: Yeah.

21 1:28:15: --then at least you'd have the rule to go on, whereas right  
22 now--

23 1:281:18: There's nothing.

24 1:28:19: You have nothing. Yeah.

25 1:28:21: Also, proof of the relationship, like birth certificates, marriage

1 certificates, those sorts of things.

2 1:28:27: Right. Because the lists of people that are in there--

3 1:28:31: Yeah.

4 1:28:32: --like your child doesn't count, but if your daughter and your

5 niece both live with you, your niece would get benefits, but the adult daughter

6 wouldn't. That's another bugaboo, sorry. Huh?

7 1:28:50: You're still (unintelligible)

8 1:28:51: I know. Luckily there's not very many of these.

9 1:28:58: Okay--

10 1:28:58: Apparently all of them go to you.

11 1:28:59: Yeah. We could just have a rule saying the insurer does one

12 thing and talk to Jennifer. Okay. Well, we'll keep looking at this. It sounds like at a

13 minimum we can provide this--some guidance and that might at least provide some

14 clearer expectations.

15 1:29:23: Well, and even if it's--

16 1:29:24: Yeah.

17 1:29:24: --even if the rule does, as Julie suggested, do a kind of

18 laundry list of including but not limited to--

19 1:29:30: Yeah.

20 1:29:31: --if there's some, just some emphasis in the--in the language

21 of the some due diligence that the insurer needs to engage in--

22 1:29:40: Okay.

23 1:29:41: --to investigate.

24 1:29:45: Because I am not one that typically supports a fuzzy rule, but

25 in this case I think it's a little bit different--

1 1:29:52: I think it is--

2 1:29:53: --due to the circumstances--

3 1:29:54: It would be impossible for us to anticipate every different--

4 1:29:56: Right.

5 1:29:57: --situation that might come up. And we don't want to unfairly  
6 limit anybody's access to benefits. Okay. Well, thank you, all, for that.

7 So moving on to our last sub-issue here, and this is maybe also closer  
8 to Rule 150, but then something that would be in a new rule, but insurers sometimes  
9 pay monthly benefits in advance, often paying every four weeks instead of every  
10 month. When this happens, overpayments may accrue, sometimes for several  
11 months worth of benefits. At some point the insurer may recover the overpayment,  
12 interrupting the beneficiary's payment schedule. To prevent this from happening,  
13 payments for monthly benefits, PT and fatal, should be made for benefits that have  
14 already accrued, not for future benefits. Before 1996, Rule 150 provided that  
15 subsequent payments for permanent disability and fatal benefits are made in  
16 monthly sequence as earned, but this language was subsequently removed.  
17 Division believes establishing, yeah, basically reinserting a similar provision into the  
18 current rules may help clarify this requirement. We did find that that change was an  
19 intentional change, but--

20 1:31:27: Yeah.

21 1:31:27: --but we did not find any--and we do not want to use the as-  
22 earned language; it would probably be something closer to the benefits must be paid  
23 in advance. We didn't find a specific reason why that was removed in the rule  
24 record, but it sounds like you may have the idea of why.

25 1:31:44: Well, I have an idea--

1 1:31:45: Yeah.

2 1:31:45: --as to why, which is also one of the things I want to  
3 emphasize going forward, that as-earned, then some insurers would be like "Oh,  
4 well, we were paying on the 26<sup>th</sup> or the third to the last day of the month to try to  
5 ensure payments right around the first of the month for bills and all that stuff, for  
6 predictability for the survivors," and there was that concern as well as-earned, then  
7 we're not going to even to start that process until it's actually earned, so that was  
8 (unintelligible) at the time, we said, well, if you take out the as-earned, then there  
9 can be some flexibility and say, you know--

10 1:32:27: Okay.

11 1:32:27: --you pay it on a monthly basis, and then we attempted to  
12 provide that direction as to how to work those payments, because depending on how  
13 each insurance company processes their monthly benefits, you know, it makes a  
14 difference.

15 1:32:43: Sure.

16 1:32:44: Through the years and especially in the last five years, I've--  
17 well, audit can probably speak clearer to that because when you were auditing you  
18 were discovering these companies that were paying in advance, and it becomes a--it  
19 really--in my opinion, it only becomes an issue when the survivor passes away or  
20 passes away and then you have an overpayment, so--

21 1:33:12: Or--

22 1:33:12: --there's been a lot of education.

23 1:33:13: If they're reducing their benefit to try to recover that  
24 overpayment, so now the beneficiary is getting, receiving less money--

25 1:33:21: Right.

1 1:33:21: --for an overpayment that had occurred or--  
2 1:33:22: Right.  
3 1:33:23: I think that's an important problem, too.  
4 1:33:24: A--well, and that's the whole recovery process when there is  
5 that overpayment, and helping insurers through that process of recovering that  
6 overpayment in a way that doesn't devastate that survivor. Example, if you're  
7 getting \$2000 a month but you've been overpaid for however long, technically they  
8 could take 25 percent of that \$2000 payment, and so they're not only--you know, it--  
9 1:33:54: Yeah.  
10 1:33:54: --it just reduces it and it goes on for a long time, so we've  
11 worked with insurers to get them back on track, but it would be great if we had a rule  
12 that provided the guidance so it doesn't happen--  
13 1:34:04: Yeah.  
14 1:34:04: --in the future, but I still want the flexibility to where checks  
15 can go on the 24<sup>th</sup> of the--you know, a few days before the end of the month before  
16 it's earned, so those payments are going out on a regular basis. I'm confident in  
17 saying that's how we have audited for years, we allow that to take place, so I'm  
18 talking out both sides of my mouth as to saying--  
19 1:34:25: Yeah.  
20 1:34:26: --you know, don't pay in advance, unless it's just a few days.  
21 1:34:32: Sure, yeah--  
22 1:34:33: I mean, I know how stupid that sounds, but--  
23 1:34:34: No, it--  
24 1:34:34: --but it's kind of what we need.  
25 1:34:37: This is Keith, I've got an I--I mean, one idea would be to limit

1 the amount of time that they can go back on an overpayment. You know, if it was an  
2 overpayment that occurred within the last 30 days, how much could it really be to  
3 take out in the next check? Say 30 days, 45 days, you know, put a limit on how far  
4 we can go back if we've been doing this practice for however many years and then  
5 it's a \$2000 overpayment, I mean, you know, there should be a cutoff date. You  
6 know, workers have 14 days to get retroactive work restrictions; I've never quite  
7 understood why insurers have however many years to audit their file and declare a  
8 \$6000 overpayment. I mean, we see that all too often, it's like, come on, shouldn't  
9 there be timelines on both sides, so that's one option (unintelligible)--

10 1:35:21: And the reality on how those payments work, it's really the  
11 last payment that's overpaid, so it's usually just a one month or sometimes insurer's  
12 gotten off a way and it might be a six-week period of an overpayment, so it's not--

13 1:35:35: It's usually not like a multi-month late--

14 1:35:38: Actually we've seen that, too.

15 1:35:39: Yeah, I mean, it--

16 1:35:40: That should never happen.

17 1:35:42: It can go for a period of time--

18 1:35:43: Because there's no limit.

19 1:35:44: Right.

20 1:35:46: Never happened--

21 1:35:46: So I'll throw out a suggestion. I think some of the insurers get  
22 sideways with the benefits because of the limitations of their computer system. Our  
23 computer system allows we can set up a monthly payments, some computer  
24 systems they have to pay every four weeks because of their limitation, and so you  
25 end up paying 13 payments instead of 12. The rule was amended last year to

1 include benefits must be paid on a regular and predictable monthly schedule, but it  
2 just says subsequent payments. What if it said subsequent monthly payments?  
3 Because it is a monthly amount.

4 1:36:28: Correct.

5 1:36:28: And then that would clarify that you make subsequent  
6 monthly payments in a regular and predictable fashion on a monthly basis. So I'll  
7 throw another one--throw it out there for you is on occasion, again not our practice,  
8 but on occasion we will pay benefits in advance when the widow calls and says, "I  
9 need this because."

10 1:36:55: Yes.

11 1:36:56: And then we may issue with approval a double-payment.

12 1:37:03: Yes.

13 1:37:04: So if we're going to put the word must in there--

14 1:37:07: Yeah.

15 1:37:08: --I would like some provision that's with the express approval  
16 of the beneficiary that we can make an advance monthly payment and then we let  
17 them know because we send out letters saying, "We're paying you September's  
18 payment early. We'll be collecting 25 percent out of October, November, December,  
19 January."

20 1:37:34: If they want it at that 25 percent, yeah--

21 1:37:35: If they want it at that--

22 1:37:36: Which that's kind of--that's where with the adjustments that  
23 we've gone through over the past several years, I worked with one company that  
24 was like over 300 recipients had been overpaid, and so it was the whole adjustment,  
25 and instead of taking 25 percent or assuming that, you know, just blanket that for



1 everybody, we worked with each person to say, "This is going to be the default and  
2 we're going to"--they agreed to recover at a 10-percent ratio, but they double-paid  
3 one of the months so they could get on schedule, so they paid January January 1<sup>st</sup>  
4 and then it's like force an overpayment, pay the end of January to make another  
5 payment, so then there's that overpayment, but then the worker isn't or the survivor  
6 isn't suddenly having a drastic drop in income, because many of these folks, most of  
7 these folks totally rely on that, but I had some widows call--well, we won't get into all  
8 those stories, but some chose to say, "You know what? Just let's skip a month. I  
9 don't want them taking 10 percent, 5 percent down the road, I got enough to manage  
10 to skip a month, so I want to skip a month," and having that ability the rule doesn't  
11 prevent that flexibility in those situations. And then we had some people that wanted  
12 to do 10 percent, some that wanted to do 25, and the insurer was willing to do  
13 whatever would work best for that survivor.

14 1:39:16: I don't know if--this is Keith. I don't know if the law would  
15 allow it, but maybe you set the default recovery on the overpayment at 10 percent,  
16 that would be a lot less of a hit than 25 percent. You know, so maybe you adjust it  
17 to make less of an impact on--

18 1:39:31: Yeah.

19 1:39:31: --in those situations where these particular benefits are  
20 overpaid, but I'm not sure if that would be consistent with the law or not.

21 1:39:38: Yeah, well, the law allows the 25 percent, yeah, it's  
22 25 percent under the statute, but that's where with that negotiation with the insurer  
23 agreeing and they work with the Department and with the worker, now, honestly, if  
24 the insurance company had said--

25 1:39:58: Right.

1 1:39:59: --you know, then we would have had a different ballgame, but  
2 luckily folks have always been pretty willing. There have been some insurers that  
3 said, "Well, let's just gradually change it and make the payment one week later each  
4 month." Well, that really messes up families' finances regarding that, so between  
5 the ombudsman's office and WCD audit we had come up with this is kind of the  
6 protocol that we'll--that we can live with and we know that we're kind of pushing the  
7 rules and the law a little bit, but it was to get through that process for all those  
8 claims.

9 1:40:37: Isn't it up to 25 percent?

10 1:40:40: Uh-huh.

11 1:40:41: That's what I thought.

12 1:40:41: Oh, does it say up to?

13 1:40:42: Yeah.

14 1:40:42: Well, if we're looking at .268--

15 1:40:46: .268, yeah.

16 1:40:46: --(14)(a), it says shall not exceed 25 percent, so I don't know  
17 if that--

18 1:40:53: So the 10 percent wasn't contrary to the statute, it was just  
19 them agreeing that they would do it at 10 percent versus 25.

20 1:41:01: I don't know that it authorizes the Director to make a rule that  
21 says it can't be more than 10 percent--

22 1:41:04: Right, right, right--

23 1:41:08: Probably not.

24 1:41:09: No, probably not, no.

25 1:41:15: Well, and I had one widow that five percent is all she could

1 really feasibly manage without losing her house, and the insurer were great to do it, I  
2 mean, it just extended the reduced benefit for a longer period of time, but...

3 1:41:38: Okay. So, yeah, that sounds good, that any rule that we  
4 should hear should allow for--

5 1:41:48: Flexibility.

6 1:41:49: --flexibility, especially when there's agreement between the  
7 insurer and the beneficiary. And maybe, Jennifer, if you have any specific language  
8 in mind or I will probably--

9 1:42:02: Yeah.

10 1:42:02: --run whatever I come up with, but maybe we can work  
11 together--

12 1:42:04: Yeah, we had--we had language that we worked up between  
13 the different options--

14 1:42:08: Yeah, uh-huh.

15 1:42:08: --while we working with a couple of the large insurers that  
16 were doing this.

17 1:42:12: Okay. So--

18 1:42:14: Yeah, so clarifying that it's monthly rather than barring--

19 1:42:17: Yeah.

20 1:42:17: --advance payments--

21 1:42:19: Yeah.

22 1:42:19: --because occasionally those might be (unintelligible)--

23 1:42:22: And that--right, okay. So predictable and regular monthly  
24 schedule or something similar to that.

25 1:42:30: And then (unintelligible) yeah.

1 1:42:32: Yeah. Oh, does it already say monthly? Yeah--  
2 1:42:33: Well, it does say monthly, so--  
3 1:42:35: Yeah, okay.  
4 1:42:36: But notwithstanding--  
5 1:42:37: Right.  
6 1:42:37: --the insurer may agree to upon the worker's request--  
7 1:42:40: Okay.  
8 1:42:40: --pay in advance amount of monthly benefit--  
9 1:42:43: Yeah.  
10 1:42:43: --and recover.  
11 1:42:45: And I tru--  
12 1:42:45: I got it--  
13 1:42:45: So that allow that flexibility.  
14 1:42:46: Yeah, and I truly believe with audit's presence out there when  
15 you did the fatality benefit audit that that alerted enough folks to go, "Oh"--  
16 1:42:54: Yeah.  
17 1:42:55: --"we need to get back on schedule." There's still a few  
18 that...  
19 1:43:00: Yeah, we do--we do understand that our rules do not go as  
20 far as kind of one-on-one interactions with insurers, so... Okay. So we just have a  
21 little over 15 minutes left, so I do want to get through these last couple issues. So  
22 this last is or this next issue is that the rules allow clear guidelines for processing of  
23 higher education benefits. So the structure for higher education benefits is changing  
24 on January 1 due to this legislation, and now instead of--I don't have the old stuff.  
25 So going forward--yeah--

1 1:43:47: Well, the old way was they had to enroll within six months  
2 from graduating high school--

3 1:43:51: Right.

4 1:43:51: --and they had to stay enrolled, and if they stay enrolled, you  
5 see that up to the age of 23, provided they were enrolled the whole time.

6 1:43:59: Right.

7 1:43:59: The new statute says you get paid until you're 19 years old.  
8 Between the ages of 19 and 26, you, surviving child, actually it doesn't say that, but  
9 that's me, have 48 months of higher education benefits that you can use or lose  
10 anytime between 19 and 26, but that you have to provide the insurer documentation  
11 to support your eligibility for those benefits.

12 1:44:28: SAIF would propose that, as I mentioned earlier, it could be a  
13 simple one-page form that advises that beneficiary of their right and also says, you  
14 know, "Please basically complete this form and attach proof of enrollment in order to,  
15 you know, receive these benefits," that the benefits should be paid on a monthly  
16 basis so that if a work--I'm saying worker--the beneficiary is enrolled and actively  
17 attending or just enrolled, we pay full monthly benefits, not partial monthly benefits,  
18 since it's 48 months of benefit, so if they start school again in September, they  
19 receive a full month for September, they finish in mid-December, they'd receive a full  
20 monthly benefit for December. If they re-enroll, they would submit that form again  
21 with proof of continued enrollment, and it continues like that until they turn 26 or  
22 we've paid 48 months. If they want to take a term off, they can take a term off. If  
23 they want to take two years off, they can take two years off, and they can reinitiate  
24 their benefit as it meets their needs.

25 1:45:38: And one of the things with that is that if we have a very high

1 achiever child that wants to go on to medical school, in the first two years they're  
2 going to live at home or they're going to do whatever, even if they're going to pay for  
3 it on their own, they know they might need that money down the road later, they  
4 could not request for a period of time that they're in higher education and save those  
5 months for later on.

6 1:46:00: I know there's been some question about, well, what do we do  
7 about summer? Well, kids these days don't necessarily take summer off; they take  
8 spring term off, they take winter term off, who knows what term they're going to take  
9 off? I think if the rule was set up to where we paid a full monthly benefit, that would  
10 mitigate the impact of "I'm going to take a term off to work and save up some  
11 money." They're not enrolled in school--

12 1:46:27: Right.

13 1:46:28: Not that I don't believe that they should have that benefit, but  
14 the benefit appears to be intended for when they're actively enrolled and engaged,  
15 so if it was full monthly benefits while they're enrolled, that would tend to, I think,  
16 mitigate that "Well, I'm taking three months off for summer." Well, really you're only  
17 taking two months off--

18 1:46:49: Yeah.

19 1:46:49: --because you have enough partial months that we're going  
20 to pay you for a full month. I think it would make it that the beneficiary could manage  
21 their benefit coming in.

22 1:47:11: I think that's all pretty consistent with what we discussed  
23 internally, too. The only thing that you didn't mention that we have discussed is that  
24 if a child, you know, attends their year of school and they haven't claimed benefits  
25 for whatever reason or they think they're saving it for later and they change their

1 mind and they say, "Oh, you know, maybe I'm not going to do this graduate program  
2 after all," that they would then be able to provide proof of completion of the previous  
3 year and can get benefits back paid, so--

4 1:47:43: We know--

5 1:47:43: Yeah.

6 1:47:44: --that the maximum we're going to pay is 48 months--

7 1:47:45: Right.

8 1:47:45: --whether it's the first 48 months, the second, or in between,  
9 so provide the documentation. We can't go out and get that documentation because  
10 it's all now private records. If we call up Chemeketa--

11 1:47:59: Yeah.

12 1:47:59: --OSU, we're not getting that. It--

13 1:48:01: Yeah.

14 1:48:01: --needs to come from the beneficiary, it needs to be a  
15 beneficiary-driven reimbursement, but I don't think that there necessarily should be a  
16 limitation on--

17 1:48:10: Yeah.

18 1:48:11: --you have to submit it here or there. If you want your money,  
19 fill out the form, attach the enrollment, take a picture of it with your phone, text it to  
20 me, and your benefit will be paid.

21 1:48:25: And you're saying if-- We had had this internal discussion--

22 1:48:28: Yeah.

23 1:48:29: --because I was like, you know, I was, hey, I've got these  
24 grandiose ideas, I'm not going to try to claim it for the first two years, and then, you  
25 know, life changes or you have something else go on, at that point in time you go,

1 "Well, I did go for two years and I didn't collect my benefits. Can I collect it now?"  
2 There was concern about, ooh, insurers wouldn't like that, but you've got to reserve  
3 it, you should have the reserves out there for 48 months--  
4 1:48:53: And there's no limitation on retro reimbursement, is there--  
5 1:48:55: Correct.  
6 1:48:57: What did you say? Say it louder. There is no limitation on  
7 requesting retro for an insurer; why should there be a limitation on a worker or a  
8 child of claiming those benefits?  
9 1:49:11: Well, Kumbaya.  
10 1:49:12: Yeah.  
11 1:49:17: That's why we had this discussion.  
12 1:49:20: So I guess one point of clarification, so if it's active  
13 enrollment, would they need to submit this proof of enrollment at the beginning of  
14 each like term, academic term, or would one submission at the beginning of an  
15 academic year be sufficient if there's the expectation they need to tell you if they  
16 stopped?  
17 1:49:35: Typically what we're seeing is proof of enrollment for that  
18 term.  
19 1:49:39: Okay.  
20 1:49:40: So sometimes we'll take proof of acceptance into OSU, those  
21 are the work--or the beneficiaries that we developed a relationship with, our three  
22 field folks that handle this--  
23 1:49:53: Yeah.  
24 1:49:54: --and all these people by day, they call on a regular basis, so  
25 we'll take that, but typically it is term-to-term or if they're in an extended vocational



1 program, let's say 20 months, we would have a proof of 20 months of enrollment at  
2 the beginning; if they want their check by the end of the month, well, get it in and  
3 then we'll get it out as soon as possible, knowing that we have to pay again a regular  
4 and predictable monthly schedule.

5 1:50:28: Does anybody else have any thoughts about that?

6 1:50:33: I would--I am going to kind of just give a little. SAIF  
7 Corporation has a team that deals with these and they--

8 1:50:42: Yeah.

9 1:50:42: --don't run into as many problems.

10 1:50:44: Sure.

11 1:50:45: The adjusters that are handling them out there, they--I know  
12 that some of this concept gives them heartburn, so the clearer we can be in the rules  
13 to provide that direction, the more they would--it will help them because as of a week  
14 ago I had an adjuster saying, "Well, I've got their transcript and they don't have, you  
15 know, very good grades, so we really shouldn't be paying them," I've dealt with that  
16 apparently those purse strings, right, but it doesn't have an impact on the benefits, or  
17 they need to be enrolled full-time because the statute doesn't say they have to be  
18 enrolled full-time; they just have to be enrolled at least 50 percent of the--

19 1:51:27: A full-time equivalency--

20 1:51:28: A full-time--

21 1:51:29: Yeah.

22 1:51:29: --equivalency of wherever they're attending, so as much  
23 clarity that we can provide in simplicity, although it gives some folks out there a little  
24 bit of heartburn, moving forward I think that they'll overcome that. I kind of get a little  
25 bit of pleasure at them when they're annoyed at paying 400, ah, just wait until

1 January, you'll pay a thousand.

2 1:51:56: They're not (unintelligible)

3 1:51:58: Huh?

4 1:51:59: They're not sitting at a table.

5 1:52:04: Okay. Any other thoughts there about any of the issues we  
6 discussed? Okay. Well, our final issue then here is actually pretty technical in a  
7 small fix, so 436, Division 60, Rule 150, Section (6) provides that fatal benefits under  
8 656.204 must be paid no later than 30 days after the date of Notice of Acceptance or  
9 the date of any litigation orders which orders benefits. Rule should also provide for  
10 timely payment of fatal benefits following death or a period of permanent total  
11 disability. We have published an industry notice on this topic because in November  
12 of 2015 that said any monthly surviving spouse or dependent benefits must--due  
13 must continue on the established PTD payment schedule and burial benefits must  
14 be paid to the beneficiary's estate or estate of the injured worker within 30 days of  
15 the injured worker's death. I believe there's actually a small change to that and--

16 1:1:53:11: Yeah, because that's not the law.

17 1:53:13: 2238 is now it's--

18 1:53:15: Oh, and it has been that way--

19 1:53:16: Yeah.

20 1:53:16: --60 days?

21 1:53:17: It's 60 days of the worker's death or the claim acceptance or  
22 whatever is later, right, so... Yeah. It's very clear to me now, apparently wasn't  
23 when I was writing this, but... Okay. So we basically just want to include those  
24 provisions consistent with what the statute actually says in 150, although I think Amy  
25 mentioned earlier that it might be helpful to have PTD and fatal benefits separated

1 out of 150--

2 1:53:52: Yeah.

3 1:53:53: --because of the way they operate, so... So we'll look at that  
4 as well.

5 1:54:00: Is there any concern from the industry regarding PTD and  
6 when you're notified of that death? Because if you're notified but it's more than  
7 30 days from the date of death, you know, if they didn't tell you--

8 1:54:17: Weird.

9 1:54:17: We've run into that, and when we find out, we get the benefits  
10 paid as soon as possible, and if they need to convert, then we convert as soon as  
11 possible, and if it creates an overpayment, then we notify of the (unintelligible). And  
12 if it creates an underpayment, then--

13 1:54:37: It misses the whole--

14 1:54:38: The whole overpayment--

15 1:54:39: Yeah.

16 1:54:39: --we won't get into that--

17 1:54:40: Yeah.

18 1:54:41: --conversation, okay?

19 1:54:42: Yeah.

20 1:54:42: But my concern was if we're writing a rule that says paid  
21 within 30 days of the death, if there needs to be some flexibility for when you're  
22 informed of--

23 1:54:54: Or noticed, or noticed, yeah, whichever comes first.

24 1:55:02: Well, I'm pretty sure we'll know after the fact.

25 1:55:05: Well, I mean, 30 days of the death, maybe you'll get the

1 notice, too.

2 1:55:10: Yeah.

3 1:55:13: Whichever comes later.

4 1:55:14: Whichever is later.

5 1:55:14: I don't know.

6 1:55:15: Oh, that's (unintelligible) yeah. Anyway, I just because of  
7 how it was worded, there are those situations where a family memb--I mean, I've  
8 gotten calls, you know, within four hours of the death saying, "Hey, you know, where  
9 do we go?" but I know that there's those circumstances where family members may  
10 not know. Typically that's going to be in those circumstances where there's likely  
11 there's children probably, but there could be a spouse.

12 1:55:55: Okay. With that, yeah, I think we've made it through the  
13 agenda, we do--

14 1:56:04: Wait a minute.

15 1:56:05: Wait, okay.

16 1:56:06: You put some things in housekeeping that--

17 1:56:08: Okay, yeah.

18 1:56:08: --are sort of a big deal.

19 1:56:12: I was going to go through that.

20 1:56:14: Sorry.

21 1:56:14: Yeah.

22 1:56:15: I thought you were going to conclude.

23 1:56:16: Nope. Yeah, so as you kindly mentioned, we do have some  
24 housekeeping issues. In the interest of time, I'm not going to go through each one of  
25 them, but I do want to highlight some of--some of them, so particularly the two

1 changes we're making to Rule 25, which would be changing the definition of  
2 extended gaps to read from extended gaps in employment to extended gaps in  
3 earnings. We feel like the intent of that rule was clear, but we put the wrong word in  
4 the rule, so...

5 1:56:53: Are you trading one problem for another problem?

6 1:56:58: How so? Could you elaborate?

7 1:57:00: My understanding is, is it's two weeks without doing work.

8 1:57:05: Yeah.

9 1:57:06: But if you switch it to two weeks of earnings, if you don't work  
10 the last week of one earnings period and the first week of the next earnings period,  
11 you're still receiving earnings every two weeks, there is no gap, but yet if you look at  
12 the actual employment, there is a two-week gap in employment, so, oh, is that  
13 employment or earnings? There's no gap in earnings, so you're now switching it to--  
14 you're switching it to earnings from employment.

15 1:57:37: From employment to--

16 1:57:38: From employment to earnings is the--yeah--

17 1:57:40: So there's no longer a gap. And--

18 1:57:43: That's--yeah.

19 1:57:44: --we as the insurer when we're receiving payroll records, we  
20 have 45,000 policyholders out there, we don't get a nice spreadsheet that shows  
21 these are the hours worked each day--

22 1:57:57: Yeah.

23 1:57:57: --these are the earnings. In some cases we get a 52-week  
24 here's your gross earnings, in other cases we get here's the semi-monthly  
25 payments. Well, we look at the semi-monthly payments and we may not see that

1 two-week gap. We look for and ask questions, "Oh, there was a drop in earnings;  
2 what's going on?" so I think you're just trading one problem for another.

3 1:58:22: Yeah, yeah--

4 1:58:23: You still have a gap in earnings; it's just not showing up in  
5 payroll records because there's two weeks. There's payroll and then the next two  
6 weeks there's payroll, but there is still a gap in earnings on the fir--the last part of the  
7 first payroll period and the first part of the second.

8 1:58:37: And--

9 1:58:37: There's still a gap in earnings--

10 1:58:38: Right, and we wouldn't see it from just the earnings record  
11 and I think to me employment means you didn't work for two weeks, we need to ask  
12 a question--

13 1:58:50: But you're still employed--

14 1:58:52: Yeah. Employment means you're not employed there at all--

15 1:58:54: Employment is you still have a job--

16 1:58:55: So are you saying that there was a--you're looking at  
17 employment as a break in employment versus--

18 1:58:59: Yeah.

19 1:58:59: --it says actually worked--

20 1:59:00: That's correct--

21 1:59:01: We're concerned that there might be confusion about that,  
22 that this rule requires a change of employment relationship for, so like you're laid off  
23 for two weeks, you're not an employee, and that is, you know, I think--

24 1:59:13: That's not what (unintelligible)--

25 1:59:13: --to us it's clear that that's not the intent of the rule, but we

1 feel like that's not--yeah--

2 1:59:18: SAIF did share your confusion.

3 1:59:19: Sure, yeah.

4 1:59:21: I think we understood the intent and--

5 1:59:24: Okay.

6 1:59:25: --(unintelligible) so--

7 1:59:26: So mean it to earnings with that? Does that make sense  
8 then?

9 1:59:31: It may--

10 1:59:31: We're going to combine--

11 1:59:32: Do you think it may be--

12 1:59:32: You're going to have (unintelligible)--

13 1:59:33: Yeah--

14 1:59:33: Yeah.

15 1:59:35: Is it going to be a problem (unintelligible)--

16 1:59:36: When there's a change in the rule or a change in words,  
17 you're assuming that there's a change in intent.

18 1:59:41: Right. Right.

19 1:59:43: So if you're going to say that this is a housekeeping, it might  
20 need some type of explanation of "Hey, this is what the intent was. It has not  
21 changed. We simply think that this provides clarity," versus just a couple  
22 housekeeping changes, so what's that it says? Oh, it must have intended a change.

23 2:00:01: Gotcha. And from my perspective, that rule's only been in  
24 effect for eight months and it's really kind of been a big change and people are still  
25 sort of sorting out how to apply it, what it means, it hasn't particularly been litigated

1 that I'm aware, so to say after that short of a time, "Oh, well, we're going to change  
2 this word and we don't think it's a big deal," but that's why I said, wait a minute, it's a  
3 big deal.

4 2:00:30: Yeah.

5 2:00:31: I mean, it might be, I mean, now that I'm hearing the  
6 conversation I see that it's not intended to be, but I guess from a perspective of just  
7 kind of let it play out for a little while longer with the way that you made it the first  
8 place, that's personally my feeling about it. But then having heard the conversation,  
9 maybe a little more clarification's okay, but just changing that one word, yeah, that  
10 you have to put it in a statement of need or whatever, you know, to sort of explain  
11 what it is, it sort of begs the question is it really that minor or, you know, or do you  
12 need to change the rule more to make it more clear?

13 2:01:16: Yeah.

14 2:01:20: You just defined extended gap to mean for a period when a  
15 worker does not work without pay for more than 14 days, and then you don't have to  
16 change either employment or earnings because I understand (unintelligible) other  
17 possibility or at least (unintelligible) way it is right now, then there shouldn't be any  
18 kind of confusion, you'll be able to see whether (unintelligible) of work or not working  
19 for a period of time of more than 14 days, these are hourly (unintelligible) without  
20 pay.

21 2:01:52: Have you ever seen problems?

22 2:01:54: I like that.

23 2:01:54: We had a (unintelligible) with this issue.

24 2:02:00: Yeah, although I believe it was--

25 2:02:01: Asked (unintelligible) question.



1                   2:02:03: --theory, it was a they read it, they interpreted it to mean a  
2 break of employment relationship. Yeah--

3                   2:02:15: Is this an appropriate place to put it? You guys issue  
4 bulletins periodically--

5                   2:02:18: I was just about to say that--

6                   2:02:20: Sure.

7                   2:02:21: --maybe just do a policy or--

8                   2:02:21: I mean, it just seems like do a bulletin.

9                   2:02:23: In bulletin? Yeah, I believe that there was an industry notice  
10 that kind of explained some of these issues before about it. Okay. So I am hearing  
11 a lot of let it lie for now. As I said, I do think your recommendation is a very  
12 dreadful--helpful one.

13                   2:02:46: It just seems, either way--

14                   2:02:47: Yeah.

15                   2:02:47: --the bulletin, right, might be a good--a good opportunity for  
16 someone.

17                   2:02:56: Do some writing.

18                   2:02:57: Yeah.

19                   2:02:57: I don't think I would, this is Keith, I would personally oppose  
20 let it fly. I mean, if we've got a--

21                   2:03:03: Okay.

22                   2:03:03: --sense of how this is supposed to work, we should just be  
23 clear about it and then--

24                   2:03:05: Okay.

25                   2:03:05: --hopefully then we won't have to have more litigation.

1                   2:03:08: Because then we don't have to wait for an audit to take place  
2 on the period of time that--

3                   2:03:13: Okay.

4                   2:03:13: --that this applies to and find out that there's a bigger problem  
5 than what we're aware of.

6                   2:03:25: Okay. And even--and even those this is addressed as a  
7 housekeeping issue, we're obviously having--we're obviously open to having the  
8 discussion, so I... Okay. And was Ted's recommendation then, does that--would  
9 that be more clear than our change? Because I do see your point about earnings  
10 and employment being ambiguous terms. Okay. Anybody, anybody.

11                  2:04:01: No.

12                  2:04:02: Okay. Good. Well, we will--then it sounds like we will  
13 address this in the proposed rules with that recommendation, and so please do  
14 provide any further advice or testimony if you want.

15                  And so we also had a comment that just the wording in (4)(c) wasn't  
16 clear about when a wage earning agreement begins or ends. That language is  
17 included in little (a), (4)(a), and I think we understood it to apply to the entire section,  
18 but we got a comment that that wasn't clear, so we're just going to restructure that a  
19 little bit to make it clear that a new wage earning agreement under this section  
20 means a change in wage earning agreement other than just the change in pay, so...

21                  I guess I can roughly run through there. We are a little bit over, so I  
22 want to be mindful. Does anybody have any comments on the other housekeeping  
23 issues or that housekeeping issue? And in addition, so the WRME changes we will  
24 be moving the--that insurer requirement to forward the IME report to the AP from  
25 Division 10 to Division 60 just because it's an insurer requirement and we thought

1 it'd be more well placed there, and then we're moving some of these--doing some  
2 real cleanup in Division 75, but it's not actually substantive things, except for the  
3 definition of Social Security offset is there and it's clear in the rule that it only applies  
4 to 1973 to 1974, but it is not clear that it doesn't apply to other claims, so we think  
5 that it's probably okay to just get rid of that definition. Yeah.

6 So no other comments? I guess I'll turn it back to you, Fred--

7 2:06:28: You--

8 2:06:28: Yep, yeah.

9 2:06:29: Finally a comment, well, this is kind of going back to the  
10 beginning.

11 2:06:33: Okay.

12 2:06:34: I thought that the new rules for death benefits would cover  
13 this, but we didn't actually discuss it, which is some clarification about what needs to  
14 be in the Notice of Closure and who it gets sent to, because we have rescinded,  
15 because we sent it to the worker's attorney and the worker and what didn't stay its  
16 date of and didn't list the other places it got sent or other things, so just clarifying  
17 what needs to be in one of those so (unintelligible) hard time knowing what it needed  
18 to say.

19 2:07:08: Okay. A Notice of Closure particularly on a fatal claim?

20 2:07:12: On a fatal.

21 2:07:12: Okay.

22 2:07:13: It got rescinded?

23 2:07:14: Yeah, it got rescinded. It didn't say how much the money  
24 was to, but that goes out in another letter, it was odd, so, yeah, we're working on  
25 trying to comply, but it'd help to know in advance.

1                   2:07:29: Okay. Yeah, we'll look into that, I'll try to hunt down a copy of  
2 that--of that letter of why we rescinded it, too, and try to--we'll try to make it more  
3 clear.

4                   2:07:43: So, as predicted, we did run out of time, our agenda was so  
5 full that we didn't have much time for new issues, although we appreciate that last  
6 one that you provided, Julie, on the Notices of Closure, but keep in mind that I think  
7 you all have my email address or email for me probably in your inbox. Just replying  
8 to that with any additional thoughts you have is perfect, you don't have to do  
9 anything formal, or you can just pick up the phone and call me. I will send a copy of  
10 Ted's letter, and I appreciate that; with a little more forethought, I would have  
11 brought copies for the meeting today, but I will get that to all of you so you can look  
12 at that and then see if it affects your advice at all. Dan?

13                   2:08:25: Fred, just one last question. On the changes to the PTD  
14 benefits and fatal benefits, I know that for new claims they'll all be effective 1/1 of  
15 2018, but for existing claims, with the retro bulletins it would be nice to know when  
16 you need to make adjustments to the PTD benefits and those beneficiary benefits,  
17 whether it's all going to be 1/1 of '18, whether it's going to be on a subsequent retro  
18 bulletin, or that, will we be getting some type of communication that spells out when  
19 those dates are? Because we have to reprogram our computer--

20                   2:09:03: Yeah, and we'll probably do an industry notice?

21                   2:09:04: Yeah, we have it drafted, it should be coming out very soon,  
22 that it explains both the timelines of when benefits are changing, when the bulletins  
23 will be issued, and how--there are significant differences in how retro is going to  
24 work for fatal benefits and how it's going to work for PTD benefits, so it'll outline all  
25 that as well.

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2:09:27: Okay.

2:09:28: Yeah. Yeah, and you are always welcome to contact us here if you would like--would like to discuss it in more detail or want some information earlier than we get that notice out, so--

2:09:40: We just have computer folks that--

2:09:41: Yep.

2:09:42: --are programming--

2:09:43: Chomping at the bit.

2:09:44: --saying when, when, when?

2:09:45: Right. And to the best of our knowledge, we're going to try to file proposed rules in September. We could be as late as October, but we think we're on track to do it in September for an October hearing, so I will keep you all informed going forward about all of that so you can comment on the proposed rules if you like either in writing or attend the hearing. But with that, unless there's anything else. We're adjourned, and thank you very much for coming.

2:10:15: Yeah, thank you, everyone.

(WHEREUPON, the proceedings were adjourned.)

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